

FOIA/PA NO: 2013-0062

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- Ex. 7(D): Witnesses' and Allegers' PII in law enforcement records
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- Ex. 7(E): Law Enforcement Technique/Procedure used for criminal investigations
 Technique or procedure used for security or prevention of criminal activity
- Ex. 7(F): Information that could aid a terrorist or compromise security

Other/Comments: Outsidescop

Herr, Linda

From: Franovich, Mike
Sent: Tuesday, August 09, 2011 6:04 PM
To: MARION, Alex
Cc: Herr, Linda
Subject: RESPONSE: 2011 NEI FPIF

Alex,

I spoke with Commissioner Ostendorff again this afternoon. He agrees to provide a keynote address on the morning of Monday, September 12th. The Commissioner and I will attend the conference through about mid-day on the 12th before heading back to Rockville. We are looking forward to the conference.

Thanks,

Mike Franovich
Technical Assistant for Reactors
Office of Commissioner Ostendorff
301-415-1784

From: MARION, Alex [mailto:axm@nei.org]
Sent: Friday, August 05, 2011 6:45 AM
To: Franovich, Mike
Subject: Re: 2011 FPIF DRAFT Agenda 7-26-11.doc

Very good and thank you.

From: Franovich, Mike [mailto:Mike.Franovich@nrc.gov]
Sent: Thursday, August 04, 2011 03:40 PM
To: MARION, Alex
Subject: RE: 2011 FPIF DRAFT Agenda 7-26-11.doc

Alex,

Commissioner Ostendorff is interested in providing the keynote address at the NEI FPIF. However, he has a few pending commitments for the week of September 11th that have not been resolved yet. The Commissioner said he will have an answer on his availability by c.o.b. on Monday (8/8).

Mike Franovich
Technical Assistant for Reactors
Office of Commissioner Ostendorff
301-415-1784

From: MARION, Alex [mailto:axm@nei.org]
Sent: Wednesday, August 03, 2011 11:03 AM
To: Franovich, Mike
Subject: 2011 FPIF DRAFT Agenda 7-26-11.doc

Mike,

I have attached a draft of the program for our annual Fire protection Information Forum which is scheduled to be held at the Marriott, Charleston, SC. We would appreciate it if Commissioner Ostendorff would provide a keynote address the morning of September 11. If the Commissioner is interested and available we will formally submit an invitation letter. Thank you for your assistance.

Alexander Marion
Vice President, Nuclear Operations

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Herr, Linda

From: CMROSTENDORFF Resource
Sent: Monday, August 15, 2011 7:58 AM
To: Herr, Linda
Subject: FW: Fire Protection Information Forum
Attachments: 08-12-11_Marion to Ostendorff_2011 FPIF Thank You Letter.pdf

From: BELL, Denise [<mailto:dxh@nei.org>]
Sent: Friday, August 12, 2011 4:58 PM
To: CMROSTENDORFF Resource
Subject: Fire Protection Information Forum

August 12, 2011

Dr. William C. Ostendorff
Commissioner
U.S. Nuclear Regulatory Commission
Washington, DC 20555

Dear Commissioner Ostendorff,

The purpose of this letter is to extend an invitation to you to provide a keynote address at the 2011 NEI Fire Protection Information Forum. The forum will be held at the Marriott Charleston, in Charleston, South Carolina, September 11th through September 15th. During this opening Executive Session you will be joined by Mr. Jeffrey Archie, Senior Vice President and Chief Nuclear Officer South Carolina Electric and Gas, who will also provide opening remarks.

I have enclosed a draft agenda, as well as the hotel and travel information to assist you with your travel arrangements. Please take note that we have waived the registration fee for you and your staff. If your travel itinerary permits, I also invite you and your staff to join Mr. Archie and me for dinner on Sunday, September 11th at 7:30 p.m. at the Marriott Charleston.

If you or any of your staff have any questions, please do not hesitate to contact me at: (202)739-8080; axm@nei.org or Tom Basso (202) 739-8025; tbb@nei.org.

Sincerely,

Alexander Marion

Alexander Marion
Vice President
Nuclear Operations

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Herr, Linda

From: BASSO, Thomas [tbb@nei.org]
Sent: Monday, August 29, 2011 8:20 AM
To: Herr, Linda
Subject: RE: Reservations at the Charleston Marriott

Linda – sorry I did not get back to you last week. The hotel was trying to secure rooms but has not responded. The alternate hotel is the Marriott Courtyard. Here is the hotel information:

Courtyard Charleston Waterfront
35 Lockwood Drive, Charleston, SC
(t) 843.722.7229

A complimentary shuttle is available throughout the day to/from the Charleston Marriott.

Please do not hesitate to contact me if you need any further assistance.

Thomas Basso
Senior Project Manager

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E: tbb@nei.org

From: Herr, Linda [<mailto:Linda.Herr@nrc.gov>]
Sent: Wednesday, August 24, 2011 4:20 PM
To: BASSO, Thomas
Subject: Reservations at the Charleston Marriott

Good afternoon Mr. Basso:

As a follow up to the voice mail I left for you today, the booking agent for the Marriott (800-228-9290) (says she books all Marriott's nationwide) said that all the rooms are booked for this conference. Is that possible? If so, could you recommend another hotel that I might secure for Cmr. Bill Ostendorff and his TA, Mr. Mike Franovich that would be located near the conference?

I am out of the office tomorrow and Friday, August 25th and 26th however will be monitoring email until my return on Monday, August 29th.

Thank you for your assistance.

Linda A. Herr
Administrative Assistant to
Commissioner William C. Ostendorff

U.S. Nuclear Regulatory Commission
PH: 301-415-1759
FAX: 301-415-1757

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Sexton, Kimberly

Outside of Scope

From: NEIGA@nei.org [mailto:NEIGA@nei.org]

Sent: Wednesday, August 24, 2011 3:29 PM

To: Herr, Linda

Subject: Salute to Congress Reception



NUCLEAR ENERGY INSTITUTE

**The Nuclear Energy Institute and our Labor Union allies
Cordially invite you to attend our**

Salute to Congress Reception

**Wednesday, September 21, 2011
Kennedy Caucus Room
325 Russell Senate Office Building
6:00–8:30 p.m.**

Please click [here](#) to RSVP

Please RSVP by Friday, September 16, 2011.

We hope to see you there!

If you have any questions, Please contact Nik Schoenherr at:
202.739.8066 or via email at nws@nei.org

This invitation is non-transferable.

Click [here](#) to unsubscribe

Sexton, Kimberly

Outside of Scope

From: NEIGA@nei.org [mailto:NEIGA@nei.org]
Sent: Wednesday, August 24, 2011 3:29 PM
To: Herr, Linda
Subject: Salute to Congress Reception



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We hope to see you there!

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202.739.8066 or via email at nws@nei.org

This invitation is non-transferable.

Click [here](#) to unsubscribe

Herr, Linda

Outside of Scope

From: HILL, Walter [<mailto:whh@nei.org>]
Sent: Thursday, October 13, 2011 3:25 PM
To: Sexton, Kimberly
Cc: MALONEY, Jennifer; KORTE, Andrea; PETERSON, Scott
Subject: Registration Materials for Communicating Nuclear Issues Conference

Elizabeth:

I'm very glad we connected today. I've attached a current agenda for our Communicating Nuclear Issues conference, along with a speaker registration form and slide template. Commissioner Ostendorff speaks as part of the session on "Building Trust Through Communications" Nov. 15, 8:40-10:00 a.m. The session follows a keynote/welcoming address by Progress Energy Florida President Vincent Dolan.

✓ Please return registration forms for you and Commissioner Ostendorff to the NEI registrar by Oct. 24. (Contact information is provided on the form.) Note the registration fee is waived for both you and the Commissioner. The fee to attend the reception on Nov. 14 at 4:00-7:30 p.m. is \$75. The registration form includes more information on that. Please call if you need more.

✓ You will need to contact the Sheraton Sand Key directly at 727.595.1611 to reserve rooms. After Oct. 24 or when the room block is full, rates are at the discretion of the hotel. I spoke with Scott Peterson, NEI executive vice president for communications, who is chairing Commissioner Ostendorff's session. Scott says by all means the Commissioner should feel comfortable using slides and encourages him to do so. Although we don't know for sure, we believe Frank Luntz will use slides. We can even ensure that our CEO Marv Fertel uses slides if that will help complement the Commissioner's remarks.

We would much appreciate your submitting any slides and any other materials to Jennifer Maloney or Andrea Korte no later than Monday, Nov. 7. You can reach Andrea at aek@nei.org or 202.739.8030, and Jennifer at jxm@nei.org or 202.739.8023. If the Commissioner is willing to approve the posting of his slides on NEI's member website following the conference, please fill out the attached speaker release form and return it to Andrea or Jennifer as well.

As I noted, both Andrea Korte and Jennifer Maloney are available to assist you. I look forward to seeing you and the Commissioner in Florida. As always, you can contact me any time.

Many thanks!

All the best,
Walter

Walter Hill
Senior Director, External Communications

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Sexton, Kimberly

Outside of Scope

From: HILL, Walter [mailto:whh@nei.org]
Sent: Thursday, October 13, 2011 3:25 PM
To: Sexton, Kimberly
Cc: MALONEY, Jennifer; KORTE, Andrea; PETERSON, Scott
Subject: Registration Materials for Communicating Nuclear Issues Conference

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As I noted, both Andrea Korte and Jennifer Maloney are available to assist you. I look forward to seeing you and the Commissioner in Florida. As always, you can contact me any time.

Many thanks!

All the best,
Walter

Walter Hill
Senior Director, External Communications

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Herr, Linda

From: Sexton, Kimberly
Sent: Thursday, October 20, 2011 9:18 AM
To: HILL, Walter
Cc: Herr, Linda
Subject: RE: Dinner in Clearwater Beach at the Communicating Nuclear Issues Conference

Hi Walter,

I spoke with the Commissioner and the dinner sounds good. Please plan on both of us attending.

Thank you,
Kimberly

From: HILL, Walter [mailto:whh@nei.org]
Sent: Wednesday, October 19, 2011 4:05 PM
To: Sexton, Kimberly
Subject: Dinner in Clearwater Beach at the Communicating Nuclear Issues Conference

Kimberly:

Let's plan to meet for dinner at 8:00 p.m. on Monday, Nov. 15, at the Island Way Grill at 20 Island Way in Clearwater Beach. I expect that our CEO Marv Fertel and our Senior Vice President for Communications, Scott Peterson, will also join us. I also plan to invite Ed Halpin, CEO of STP Nuclear Operating Company, and his lead communicator, Buddy Eller. At this point, however, I'm not sure Ed will be in Clearwater on Monday evening, as he doesn't speak until the final day of the conference. I can let you know for certain once we get closer to the date.

Please let me know if this will work for you and the Commissioner.

Here are few phone numbers I suggest you keep handy: the Island Way Grill is 727-461-6617, and my mobile is

(b)(6)

I look forward to seeing you and the Commissioner in Florida. Give a shout if I can help with any of your other preparations.

Walter

Walter Hill
Senior Director, External Communications

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From: Sexton, Kimberly [mailto:Kimberly.Sexton@nrc.gov]
Sent: Monday, October 17, 2011 9:16 AM
To: HILL, Walter
Subject: RE: Registration Materials for Communicating Nuclear Issues Conference

Walter,

The Commissioner and I will not be attending the reception but are interested in dinner with you and your colleagues after the reception ends.

Thank you,
Kimberly

From: HILL, Walter [mailto:whh@nei.org]
Sent: Friday, October 14, 2011 2:23 PM
To: Sexton, Kimberly
Subject: RE: Registration Materials for Communicating Nuclear Issues Conference

Thanks, Kimberly. I'm quite flexible and can accommodate whatever works best for you and the Commissioner. Enjoy your weekend. Walter

From: Sexton, Kimberly [mailto:Kimberly.Sexton@nrc.gov]
Sent: Friday, October 14, 2011 12:11 PM
To: HILL, Walter
Cc: KORTE, Andrea; MALONEY, Jennifer
Subject: RE: Registration Materials for Communicating Nuclear Issues Conference

Thanks Walter. The Commissioner is out of the office today, so I'll have to get back to you next week. I think that he would be interested in dinner, though I'm not sure whether or not we'll be attending the reception as well.

Thank you,
Kimberly

Kimberly A. Sexton
Legal Counsel
Office of Commissioner William C. Ostendorff
U.S. Nuclear Regulatory Commission
(301) 415-3599 (office)
(b)(6) (mobile)
(301) 415-1757 (fax)
Kimberly.Sexton@nrc.gov

From: HILL, Walter [mailto:whh@nei.org]
Sent: Thursday, October 13, 2011 4:24 PM

To: Sexton, Kimberly
Cc: KORTE, Andrea; MALONEY, Jennifer
Subject: RE: Registration Materials for Communicating Nuclear Issues Conference

Kimberly: The 6-7:30 timeframe is simply an open reception with heavy hors d'oeuvres. There are no events per se, nor meals during that timeframe. The \$75 covers the guest fee for the reception, which I trust will satisfy obligations from your end. I'd very much like to make arrangements for you and the Commissioner to join me and some of my NEI colleagues for dinner after the reception, if that is possible, making arrangement for payment as needed of course. Would that work for you? Walter

From: Sexton, Kimberly [<mailto:Kimberly.Sexton@nrc.gov>]
Sent: Thursday, October 13, 2011 4:07 PM
To: HILL, Walter
Cc: MALONEY, Jennifer; KORTE, Andrea; PETERSON, Scott
Subject: RE: Registration Materials for Communicating Nuclear Issues Conference

Thanks so much for the information Walter.

Andrea or Jennifer, can you give me a little more information on the Monday reception? All the form says is that its \$75, from 6-7:30. We're trying to book our flights accordingly and exact times, meals, and events during that time frame would be very helpful for the Commissioner to know.

Thank you and I look forward to working with you,

Kimberly A. Sexton
Legal Counsel
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U.S. Nuclear Regulatory Commission
(301) 415-3599 (office)
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(301) 415-1757 (fax)
Kimberly.Sexton@nrc.gov

From: HILL, Walter [<mailto:whh@nei.org>]
Sent: Thursday, October 13, 2011 3:25 PM
To: Sexton, Kimberly
Cc: MALONEY, Jennifer; KORTE, Andrea; PETERSON, Scott
Subject: Registration Materials for Communicating Nuclear Issues Conference

Elizabeth:

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As I noted, both Andrea Korte and Jennifer Maloney are available to assist you. I look forward to seeing you and the Commissioner in Florida. As always, you can contact me any time.

Many thanks!

All the best,
Walter

Walter Hill
Senior Director, External Communications

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Sexton, Kimberly

Outside of Scope

----- Original Message -----

From: "Nich, Ho" <Ho.Nieh@nrc.gov>

To: "Tateiwa, Kenji" <tateiwa.kenji@tepcoco.jp>; "Sexton, Kimberly" <Kimberly.Sexton@nrc.gov>

Cc: "HILL, Walter" <whh@nei.org>; "Herr, Linda" <Linda.Herr@nrc.gov>

Sent: Tuesday, November 01, 2011 5:33 AM

Subject: RE: Dec. 6th Nuclear Safety Post-Fukushima Conference

Dear Kenji,

Pardon me for not getting in touch with you sooner after receiving Walter's message.

Over the next two weeks, I will begin preparing Commissioner Ostendorff's remarks for the December 6 conference.

Perhaps it would be helpful if you and I to talk over the phone about the conference.

Please let me know if you would like to have a phone call, and I will ask my staff to arrange a time either this week or next that works for both of us.

Best regards,

Ho

Ho Nieh
Chief of Staff
Office of Commissioner William C. Ostendorff
U.S. Nuclear Regulatory Commission
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(b)(6) (mobile)
(301) 415-1757 (fax)
ho.nieh@nrc.gov

Outside of Scope

----- Original Message -----

From: HILL, Walter<mailto:whh@nei.org>
To: Nieh, Ho<mailto:Ho.Nieh@nrc.gov> ; Sexton, Kimberly
(Kimberly.Sexton@nrc.gov)<mailto:Kimberly.Sexton@nrc.gov>
Cc: Tateiwa, Kenji<mailto:tateiwa.kenji@tepco.co.jp>
Sent: Wednesday, October 26, 2011 10:22 AM
Subject: Dec. 8 Presentation by Commissioner Ostendorff

Ho, Kimberly:

Kenji Tateiwa is the relatively new Washington, D.C., representative for TEPCO and is presenting alongside Commissioner Ostendorff on Dec. 8 at the Infocast Nuclear Safety Summit. Kenji was here today at NEI, and I mentioned that I had worked with both you in coordinating the Commissioner's talk for our conference in Florida. Kenji asked if it might be possible to talk to one of you as he prepares for his remarks for Dec. 8. If so, could one of you please contact him? I know he would much appreciate it. I have included his contact information below.

Kenji Tateiwa
Manager, Nuclear Power Programs
Tokyo Electric Power Company
Washington Office
1901 L Street, NW Suite 720
Washington, DC 20036
tel: +1-202-457-0790 (ext.)116
mobile: (b)(6)

All the best,
Walter

Walter Hill
Senior Director, External Communications

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[<http://resources.nei.org/email/tagline.jpg>]<<http://www.nei.org>>

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<http://www.flickr.com/photos/_nei/>
[<http://resources.nei.org/email/blogger.png>]
<<http://neinuclearnotes.blogspot.com/>>

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Sent through mail.messaging.microsoft.com

Sexton, Kimberly

From: ZORN, Jason [jcz@nei.org]
Sent: Monday, April 02, 2012 12:38 PM
To: Sexton, Kimberly
Subject: RE: Legal Speaking Opportunities

Fully understood. Isn't it great being a lawyer, with all of our unnecessary caveats, conditions, and disclaimers?

From: Sexton, Kimberly [mailto:Kimberly.Sexton@nrc.gov]
Sent: Monday, April 02, 2012 12:32 PM
To: ZORN, Jason
Subject: RE: Legal Speaking Opportunities

Oh, don't worry. All of this will be properly addressed so as to cover both of us (since I need to make clear that I didn't go out asking you to put us on the calendar).

From: ZORN, Jason [mailto:jcz@nei.org]
Sent: Monday, April 02, 2012 12:32 PM
To: Sexton, Kimberly
Subject: RE: Legal Speaking Opportunities

Hmmm, might be a bridge too far. I'm sure I don't need to say this, but for my own peace of mind, please don't suggest that there's an actual request or interest on our end, since I have not vetted this with anyone here. You could probably say something like, you checked with NEI, and the next lawyers committee meeting is June 5th, but you have no idea if they've already booked a keynote or have any agenda. I don't want to get too far in front of anyone here.

From: Sexton, Kimberly [mailto:Kimberly.Sexton@nrc.gov]
Sent: Monday, April 02, 2012 12:27 PM
To: ZORN, Jason
Subject: RE: Legal Speaking Opportunities

The time slot is held for a speech in Baltimore in the morning. I don't know how firm it is. I don't know if he'd want to do a repeat appearance. I have a bi-weekly with him this afternoon and check on both points (repeat and speech in the morning) before you check with Ellen.

From: ZORN, Jason [mailto:jcz@nei.org]
Sent: Monday, April 02, 2012 12:26 PM
To: Sexton, Kimberly
Subject: RE: Legal Speaking Opportunities

Is there a way you can (quietly) check on his availability on June 5? That's the next LC meeting date. I'm not sure if he would be making a repeat appearance (since he last spoke to them March 2011) or if we would want to re-invite him, but if he's already booked, then we don't even have to have that discussion.

From: Sexton, Kimberly [mailto:Kimberly.Sexton@nrc.gov]
Sent: Monday, April 02, 2012 12:09 PM
To: ZORN, Jason
Subject: RE: Legal Speaking Opportunities

Thanks!

From: ZORN, Jason [mailto:jcz@nei.org]
Sent: Monday, April 02, 2012 12:11 PM
To: Sexton, Kimberly
Subject: RE: Legal Speaking Opportunities

Hmmmm ... good question. The only thing I can think of off the top of my head is the next NEI Lawyers Committee meeting, which would be in June (I think). He could make a repeat appearance there. I'm not always tapped into the latest in conferences, so let me ask Ellen if she has any ideas and get back to you.

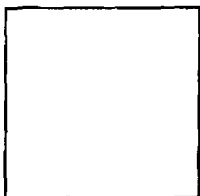
From: Sexton, Kimberly [mailto:Kimberly.Sexton@nrc.gov]
Sent: Monday, April 02, 2012 11:52 AM
To: ZORN, Jason
Subject: Legal Speaking Opportunities

Hi friend,

We're trying to keep up with speaking opportunities for WCO in the legal arena. I've reached out to Burns, Tison, and Tyson Smith (because of his chairing the ABA's Special Committee on Nuclear Power) to see if they knew of anything off hand, but no one did. Do you know of any legal conferences, symposia, etc. where WCO might be a good speaker?

Thanks!

Kimberly A. Sexton
Legal Counsel
Office of Commissioner William C. Ostendorff
U.S. Nuclear Regulatory Commission
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(b)(6) (mobile)
(301) 415-1757 (fax)
Kimberly.Sexton@nrc.gov



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Sexton, Kimberly

Outside of Scope

From: COTTINGHAM, Anne [<mailto:awc@nei.org>]
Sent: Monday, April 16, 2012 12:56 PM
To: Sexton, Kimberly
Cc: GINSBERG, Ellen; BONANNO, Jerry; ZORN, Jason
Subject: RE: Speaking Opportunity for Commissioner Ostendorff

Hi Kimberly – This is great news!! I will start thinking about an appropriate downtown venue for this event, since NEI is not large enough.

Can you give me a couple of dates in May that would work for the commissioner? I'll match those dates to the locations I have in mind. And I'm assuming he prefers a daytime event rather than late afternoon-evening?

Thanks – we'll get this thing moving.

Jason is on a well-deserved vacation this week.

anne

Anne W. Cottingham
Associate General Counsel

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Washington, DC 20006-3708
www.nei.org

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F: 202-533-0106
M: (b)(6)
E: awc@nei.org

From: Sexton, Kimberly [<mailto:Kimberly.Sexton@nrc.gov>]
Sent: Monday, April 16, 2012 12:23 PM
To: ZORN, Jason; COTTINGHAM, Anne
Subject: Speaking Opportunity for Commissioner Ostendorff

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Sexton, Kimberly

Outside of Scope

From: BONANNO, Jerry [mailto:jxb@nei.org]
Sent: Tuesday, April 17, 2012 9:52 AM
To: Sexton, Kimberly
Cc: COTTINGHAM, Anne; GINSBERG, Ellen; ZORN, Jason
Subject: Re: Speaking Opportunity for Commissioner Ostendorff

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We'll be in touch to talk more about details. Thanks!

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Anne,

Depending on the venue, the Commissioner could do:

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May 8th (morning)
May 9th (morning)
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May 18th
May 23rd

He is open to morning or early afternoon for the event.

Thank you,
Kimberly

From: COTTINGHAM, Anne [mailto:awc@nei.org]
Sent: Monday, April 16, 2012 12:56 PM
To: Sexton, Kimberly
Cc: GINSBERG, Ellen; BONANNO, Jerry; ZORN, Jason
Subject: RE: Speaking Opportunity for Commissioner Ostendorff

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Thanks – we'll get this thing moving.

(b)(6)

anne

Anne W. Cottingham
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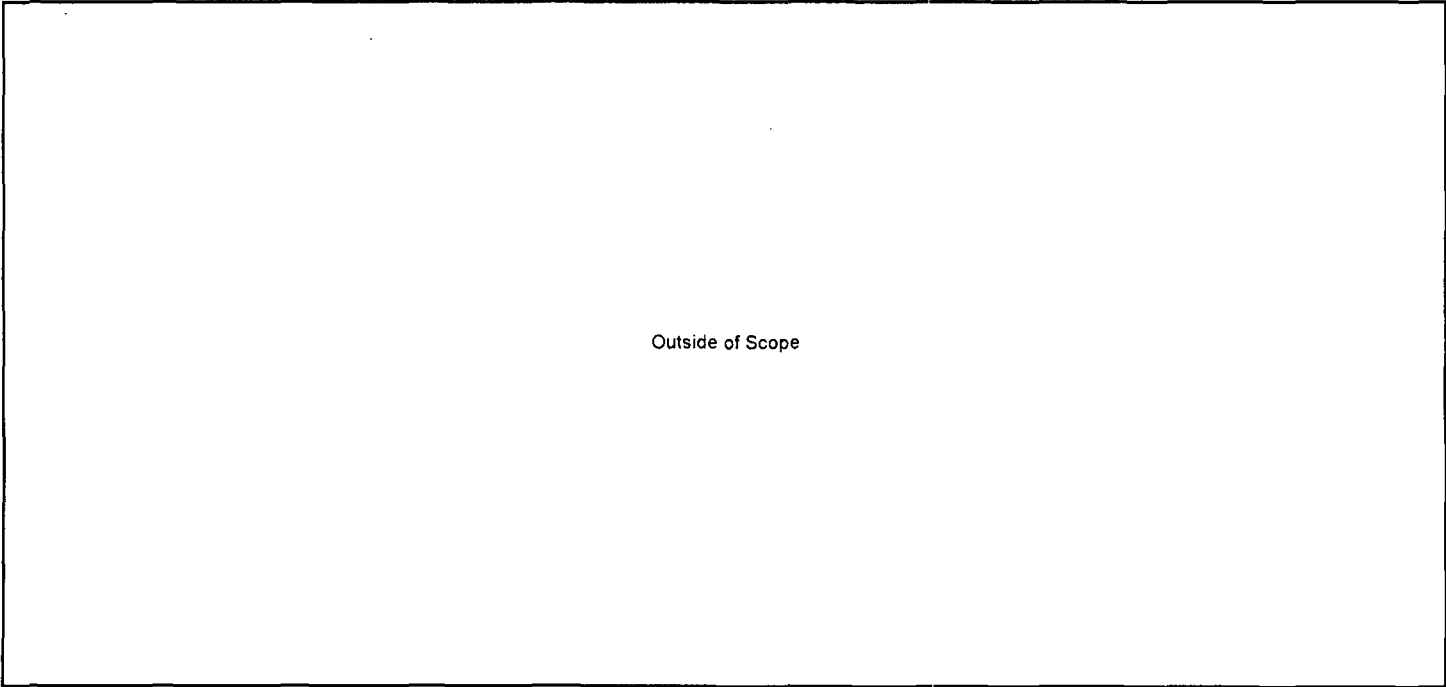


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Sexton, Kimberly

From: Herr, Linda
Sent: Tuesday, April 17, 2012 10:58 AM
To: Sexton, Kimberly
Subject: RE: Speaking Opportunity for Commissioner Ostendorff
Importance: High



From: BONANNO, Jerry [mailto:jxb@nei.org]
Sent: Tuesday, April 17, 2012 9:52 AM
To: Sexton, Kimberly
Cc: COTTINGHAM, Anne; GINSBERG, Ellen; ZORN, Jason
Subject: Re: Speaking Opportunity for Commissioner Ostendorff

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Kimberly

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Sent: Monday, April 16, 2012 12:56 PM
To: Sexton, Kimberly
Cc: GINSBERG, Ellen; BONANNO, Jerry; ZORN, Jason
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F: 202-533-0106

M: (b)(6)

E: awc@nei.org

From: Sexton, Kimberly [mailto:Kimberly.Sexton@nrc.gov]
Sent: Monday, April 16, 2012 12:23 PM
To: ZORN, Jason; COTTINGHAM, Anne
Subject: Speaking Opportunity for Commissioner Ostendorff

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Sexton, Kimberly

From: GINSBERG, Ellen [ecg@nei.org]
Sent: Wednesday, April 18, 2012 2:25 PM
To: Sexton, Kimberly
Subject: RE: Speaking Opportunity for Commissioner Ostendorff

Thank you for that insight. We will be back in touch soon.

Ellen Ginsberg
Vice President, General Counsel and Secretary
Nuclear Energy Institute
1776 I Street N.W., Suite 400
Washington, D.C. 20006
www.nei.org

P: 202-739-8140
F: 202-533-0140
M: 202-437-0660
E: ecg@nei.org

From: Sexton, Kimberly [mailto:Kimberly.Sexton@nrc.gov]
Sent: Wednesday, April 18, 2012 10:11 AM
To: GINSBERG, Ellen
Cc: BONANNO, Jerry; COTTINGHAM, Anne; ZORN, Jason
Subject: RE: Speaking Opportunity for Commissioner Ostendorff

Ellen,

One of the areas that Commissioner Ostendorff would like to cover is adequate protection in practice, with a focus on SECY-12-0025.

Thank you,
Kimberly

From: GINSBERG, Ellen [mailto:ecg@nei.org]
Sent: Tuesday, April 17, 2012 11:35 AM
To: Sexton, Kimberly
Cc: BONANNO, Jerry; COTTINGHAM, Anne; ZORN, Jason
Subject: RE: Speaking Opportunity for Commissioner Ostendorff

Kimberly,

Many thanks for running this to ground. Please convey our appreciation to the Commissioner.

We are developing a proposed approach to make this as valuable to all parties as possible, and will be back in touch shortly to discuss. In the meantime, could you inquire whether Commissioner Ostendorff has ideas that he would like to share regarding format and areas to be covered?

Again, thanks for your work on this event.

Regards,

Ellen Ginsberg

Ellen Ginsberg
Vice President, General Counsel and Secretary
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From: Sexton, Kimberly [<mailto:Kimberly.Sexton@nrc.gov>]
Sent: Tuesday, April 17, 2012 11:26 AM
To: BONANNO, Jerry
Cc: COTTINGHAM, Anne; GINSBERG, Ellen; ZORN, Jason
Subject: RE: Speaking Opportunity for Commissioner Ostendorff

Jerry,

That works for Commissioner Ostendorff. 8am-12noon is on hold for May 10th.

Thanks!
Kimberly

From: BONANNO, Jerry [<mailto:jxb@nei.org>]
Sent: Tuesday, April 17, 2012 9:52 AM
To: Sexton, Kimberly
Cc: COTTINGHAM, Anne; GINSBERG, Ellen; ZORN, Jason
Subject: Re: Speaking Opportunity for Commissioner Ostendorff

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Sent from my iPhone

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Thank you,
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From: COTTINGHAM, Anne [<mailto:awc@nei.org>]
Sent: Monday, April 16, 2012 12:56 PM
To: Sexton, Kimberly
Cc: GINSBERG, Ellen; BONANNO, Jerry; ZORN, Jason
Subject: RE: Speaking Opportunity for Commissioner Ostendorff

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To: ZORN, Jason; COTTINGHAM, Anne
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Sexton, Kimberly

Outside of Scope

From: COTTINGHAM, Anne <awc@nei.org>
To: Sexton, Kimberly
Sent: Fri Apr 20 09:36:27 2012
Subject: FW: NEI legal division invitation to round-table discussion with Commissioner Ostendorff

Hi Kimberly—

Just FYI, please note the message below giving the particulars of the upcoming May 10 meeting. We are very excited about the opportunity to host the upcoming discussions with Commissioner Ostendorff and I hope that enthusiasm shows in our email! Your suggestion to put "adequate protection in practice" on the agenda is excellent; perhaps we can talk over the next 2 weeks about additions to the list of suggested topics.

Enjoy the weekend. Thanks, anne

Anne W. Cottingham
Associate General Counsel

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F: 202-533-0106

M: (b)(6)

E: awc@nei.org

From: GINSBERG, Ellen

Sent: Thursday, April 19, 2012 11:53 AM

To: jaluise@energy.com; sblanton@balch.com; lchandler@morganlewis.com; dave.conley@pgnmail.com; arthur.domby@troutmansanders.com; bradley.fewell@exeloncorp.com; ggarfield@daypitney.com; michael.green@pinnaclewest.com; dirwin@hunton.com; david.lewis@pillsburylaw.com; lara.nichols@duke-energy.com; jl pember@southernco.com; drepka@winston.com; mitch.ross@fpl.com; ejvigluicci@tva.gov

Cc: BONANNO, Jerry; COTTINGHAM, Anne; GINSBERG, Ellen; ZORN, Jason; BENJAMIN, Melissa

Subject: Invitation

Ladies and Gentlemen:

The NEI Legal Division is offering a new and different opportunity to interact with and gain insights from an NRC Commissioner in a small group setting.

We are pleased to invite you to participate in a round-table discussion with Commissioner William C. Ostendorff on current topics of interest to the nuclear bar and the industry at large. This first of its kind event will be held on **Thursday, May 10th at the offices of Winston & Strawn LLP, 1700 K Street NW, Washington, D.C.** from approximately 8:30 a.m. until noon. Lunch will be served during which a short session to debrief will be held.

Commissioner Ostendorff has suggested topics that he wishes to address. We seek your input on items you would like to have on the agenda and will provide more details closer to the meeting date.

To facilitate an open and productive discussion, we are limiting the number of round-table participants. Thus, we ask that you let us know as soon as possible, by **Monday, April 30th**, whether you plan to participate. We also request that you treat this invitation as personal. Please send your response to Melissa Benjamin (mb@nei.org or 202-739-8151) with a copy to me indicating whether you will attend.

We look forward to seeing you and hope our anticipated outcome of a very valuable opportunity will provide the impetus for us to hold other events of this kind.

Cordially,

Ellen C. Ginsberg

Ellen Ginsberg
Vice President, General Counsel and Secretary
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Sexton, Kimberly

Outside of Scope

From: Sexton, Kimberly
Sent: Monday, April 23, 2012 2:06 PM
To: 'COTTINGHAM, Anne'
Subject: RE: NEI legal division invitation to round-table discussion with Commissioner Ostendorff

Anne,

Thank you for passing Ellen's email along. Although we put a hold on the Commissioner's calendar from 8am until noon for May 10th, the hold included his travel time to and from the roundtable location. Given the Commissioner's schedule that week, a 2.5-hour roundtable would work best (time frames like 8:30-11 or 10-12:30).

As we previously discussed, Commissioner Ostendorff is interested in addressing adequate protection in practice. A sample agenda is below. He is glad to substitute a topic or add another topic that is of interest to NEI and the other participants.

- 30 minutes – Commissioner Ostendorff discusses his votes on post-Fukushima actions, including his latest vote on the Fukushima orders
- 20 minutes – Q&A on post-Fukushima actions
- 5 minutes – break
- 20 minutes – Commissioner Ostendorff discusses his votes on the Vogtle and Summer Orders, with a focus on how best to address the post-Fukushima actions in the licensing process
- 20 minutes – Q&A on Vogtle and Summer Orders
- 5 minutes – break
- 50 minutes – other topic and/or general Q&A from the audience on other assorted topics of interest

I am free to discuss further this week.

Thank you,

Kimberly A. Sexton

Legal Counsel
Office of Commissioner William C. Ostendorff
U.S. Nuclear Regulatory Commission
(301) 415-3599 (office)
(b)(6) (mobile)
(301) 415-1757 (fax)
Kimberly.Sexton@nrc.gov

From: COTTINGHAM, Anne [mailto:awc@nei.org]
Sent: Friday, April 20, 2012 9:36 AM
To: Sexton, Kimberly
Subject: FW: NEI legal division invitation to round-table discussion with Commissioner Ostendorff

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F: 202-533-0106
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E: awc@nei.org

From: GINSBERG, Ellen
Sent: Thursday, April 19, 2012 11:53 AM
To: jaluisse@energyc.com; sblanton@balch.com; lchandler@morganlewis.com; dave.conley@pgnmail.com; arthur.dombay@troutmansanders.com; bradley.fewell@exeloncorp.com; ggarfield@daypitney.com; michael.green@pinnaclewest.com; dirwin@hunton.com; david.lewis@pillsburylaw.com; lara.nichols@duke-energy.com; jl pember@southernco.com; drepka@winston.com; mitch.ross@fpl.com; ejvigluicci@tva.gov

Cc: BÒNANNO, Jerry; COTTINGHAM, Anne; GINSBERG, Ellen; ZORN, Jason; BENJAMIN, Melissa

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We are pleased to invite you to participate in a round-table discussion with Commissioner William C. Ostendorff on current topics of interest to the nuclear bar and the industry at large. This first of its kind event will be held on **Thursday, May 10th at the offices of Winston & Strawn LLP, 1700 K Street NW, Washington, D.C.,** from approximately 8:30 a.m. until noon. Lunch will be served during which a short session to debrief will be held.

Commissioner Ostendorff has suggested topics that he wishes to address. We seek your input on items you would like to have on the agenda and will provide more details closer to the meeting date.

To facilitate an open and productive discussion, we are limiting the number of round-table participants. Thus, we ask that you let us know as soon as possible, by **Monday, April 30th**, whether you plan to participate. We also request that you treat this invitation as personal. Please send your response to Melissa Benjamin (mb@nei.org or 202-739-8151) with a copy to me indicating whether you will attend.

We look forward to seeing you and hope our anticipated outcome of a very valuable opportunity will provide the impetus for us to hold other events of this kind.

Cordially,

Ellen C. Ginsberg

Ellen Ginsberg
Vice President, General Counsel and Secretary
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www.nei.org

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F: 202-533-0140

M: 202-437-0660

E: ecg@nei.org

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Sexton, Kimberly

From: COTTINGHAM, Anne [awc@nei.org]
Sent: Monday, April 23, 2012 2:17 PM
To: Sexton, Kimberly
Subject: Re: NEI legal division invitation to round-table discussion with Commissioner Ostendorff

Thanks -- we will work out time limits to suit the Commissioner! I will call you. Anne

Sent from my iPhone

On Apr 23, 2012, at 2:06 PM, "Sexton, Kimberly" <Kimberly.Sexton@nrc.gov> wrote:

Anne,

Thank you for passing Ellen's email along. Although we put a hold on the Commissioner's calendar from 8am until noon for May 10th, the hold included his travel time to and from the roundtable location. Given the Commissioner's schedule that week, a 2.5-hour roundtable would work best (time frames like 8:30-11 or 10-12:30).

As we previously discussed, Commissioner Ostendorff is interested in addressing adequate protection in practice. A sample agenda is below. He is glad to substitute a topic or add another topic that is of interest to NEI and the other participants.

- 30 minutes – Commissioner Ostendorff discusses his votes on post-Fukushima actions, including his latest vote on the Fukushima orders
- 20 minutes – Q&A on post-Fukushima actions
- 5 minutes – break
- 20 minutes – Commissioner Ostendorff discusses his votes on the Vogtle and Summer Orders, with a focus on how best to address the post-Fukushima actions in the licensing process
- 20 minutes – Q&A on Vogtle and Summer Orders
- 5 minutes – break
- 50 minutes – other topic and/or general Q&A from the audience on other assorted topics of interest

I am free to discuss further this week.

Thank you,

Kimberly A. Sexton
Legal Counsel
Office of Commissioner William C. Ostendorff
U.S. Nuclear Regulatory Commission
(301) 415-3599 (office)
(b)(6) (mobile)
(301) 415-1757 (fax)
Kimberly.Sexton@nrc.gov

From: COTTINGHAM, Anne [mailto:awc@nei.org]
Sent: Friday, April 20, 2012 9:36 AM
To: Sexton, Kimberly
Subject: FW: NEI legal division invitation to round-table discussion with Commissioner Ostendorff

Hi Kimberly—

Just FYI, please note the message below giving the particulars of the upcoming May 10 meeting. We are very excited about the opportunity to host the upcoming discussions with Commissioner Ostendorff and I hope that enthusiasm shows in our email! Your suggestion to put "adequate protection in practice" on the agenda is excellent; perhaps we can talk over the next 2 weeks about additions to the list of suggested topics.

Enjoy the weekend. Thanks, anne

Anne W. Cottingham
Associate General Counsel

Nuclear Energy Institute
1776 I Street, N.W., Suite 400
Washington, DC 20006-3708
www.nei.org

P: 202-739-8139

F: 202-533-0106

M: (b)(6)

E: awc@nei.org

From: GINSBERG, Ellen
Sent: Thursday, April 19, 2012 11:53 AM
To: jaluise@entergy.com; sblanton@balch.com; lchandler@morganlewis.com;
dave.conley@pgnmail.com; arthur.dombey@troutmansanders.com; bradley.fewell@exeloncorp.com;
ggarfield@daypitney.com; michael.green@pinnaclewest.com; dirwin@hunton.com;
david.lewis@pillsburylaw.com; lara.nichols@duke-energy.com; jl pember@southernco.com;
drepka@winston.com; mitch.ross@fpl.com; ejviguicci@tva.gov
Cc: BONANNO, Jerry; COTTINGHAM, Anne; GINSBERG, Ellen; ZORN, Jason; BENJAMIN, Melissa
Subject: Invitation

Ladies and Gentlemen:

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<http://www.nuclearcleanair.org>

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Sexton, Kimberly

From: ZORN, Jason [jcz@nei.org]
Sent: Monday, April 23, 2012 3:19 PM
To: Sexton, Kimberly
Subject: RE: NEI legal division invitation to round-table discussion with Commissioner Ostendorff

That would have been a long time. Is he pretty set on this agenda? We had a couple of other issues we were thinking about adding that would not fall under the broad umbrella of Fukushima or COLs, but they could easily fall under the "other" category. Otherwise, I think this covers the majority of the things we were going to propose.

From: Sexton, Kimberly [mailto:Kimberly.Sexton@nrc.gov]
Sent: Monday, April 23, 2012 3:17 PM
To: ZORN, Jason
Subject: RE: NEI legal division invitation to round-table discussion with Commissioner Ostendorff

I would be happy to coordinate with you! Def settle back in and then we can chat. Now that we're at 2.5 instead of 3.5 I think it'll be much smoother.

From: ZORN, Jason [mailto:jcz@nei.org]
Sent: Monday, April 23, 2012 3:15 PM
To: Sexton, Kimberly
Subject: FW: NEI legal division invitation to round-table discussion with Commissioner Ostendorff

I'm back in the office now. ☺ Please coordinate directly with me on all future actions related to this event. Your cooperation is greatly appreciated. ☺

I'll call you tomorrow. Today's nuts, being the first day back from vacay.

From: COTTINGHAM, Anne
Sent: Monday, April 23, 2012 3:11 PM
To: GINSBERG, Ellen; ZORN, Jason; BONANNO, Jerry
Subject: FW: NEI legal division invitation to round-table discussion with Commissioner Ostendorff

Everyone:

I have spoken with Kimberly Sexton and assured her that we are happy to work around the limits in Commissioner Ostendorff's schedule on May 10th (see below). The current plan is to plan for him to be available to speak from 9-11:30 a.m. This accomplishes the Commissioner's goal of devoting 2.5 hours to the roundtable. Also, this does not preclude people from arriving earlier than that, and it does not preclude NEI from staying beyond 11:30 for lunch and a debriefing with members of the LC, as Ellen's invitation stated.

I told Kimberly that we are developing a list of additional suggested discussion topics and that we will forward the list for his approval in advance of the meeting. Jason, I'm happy to hand this back to you now that you've returned rested, relaxed, resilient & raucous from vacation. When Kimberly responded to us last week, I thought we should not put her off for a moment so we jumped on the opportunity and settled on a date. Thanks, anne

Anne W. Cottingham
Associate General Counsel

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E: awc@nei.org

From: Sexton, Kimberly [<mailto:Kimberly.Sexton@nrc.gov>]
Sent: Monday, April 23, 2012 2:06 PM
To: COTTINGHAM, Anne
Subject: RE: NEI legal division invitation to round-table discussion with Commissioner Ostendorff

Anne,

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I am free to discuss further this week.

Thank you,

Kimberly A. Sexton
Legal Counsel
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From: COTTINGHAM, Anne [<mailto:awc@nei.org>]
Sent: Friday, April 20, 2012 9:36 AM
To: Sexton, Kimberly
Subject: FW: NEI legal division invitation to round-table discussion with Commissioner Ostendorff

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Enjoy the weekend. Thanks, anne

Anne W. Cottingham
Associate General Counsel

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P: 202-739-8139
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From: GINSBERG, Ellen

Sent: Thursday, April 19, 2012 11:53 AM

To: jaluisse@entergy.com; sblanton@balch.com; lchandler@morganlewis.com; dave.conley@pgnmail.com; arthur.domby@troutmansanders.com; bradley.fewell@exeloncorp.com; ggarfield@daypitney.com; michael.green@pinnaclewest.com; dirwin@hunton.com; david.lewis@pillsburylaw.com; lara.nichols@duke-energy.com; jlpeber@southernco.com; drepka@winston.com; mitch.ross@fpl.com; ejvigluicci@tva.gov

Cc: BONANNO, Jerry; COTTINGHAM, Anne; GINSBERG, Ellen; ZORN, Jason; BENJAMIN, Melissa

Subject: Invitation

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Sexton, Kimberly

From: ZORN, Jason [jcz@nei.org]
Sent: Monday, April 30, 2012 12:13 PM
To: Sexton, Kimberly
Subject: Proposed Agenda for Commissioner O's Roundtable Discussion
Attachments: Agenda and Topics for NEI Roundtable Discussion with Commissioner Ostendorff (May 10, 2012).doc

Kimberly

Per our discussion, a proposed agenda and list of topics is attached. As I said, the topics are not intended to limit the discussion, but just give you a sense of what participants might be interested in. The Commissioner is obviously free to bring up whatever issues he likes, or strike from this list things that he does not want to discuss with this group. Please let me know if you want to discuss further, and let me know as soon as you can if this is acceptable to the Commissioner. Thanks.

Jason

Jason Zorn
Assistant General Counsel
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AGENDA AND TOPICS FOR NEI LAWYERS COMMITTEE ROUNDTABLE
WITH COMMISSIONER OSTENDORFF
(May 10, 2012)

AGENDA

9 to 9:05	Introduction of Commissioner Ostendorff and Attendees
9:05 to 10:00	Commissioner Ostendorff Presentation on Topics of his Choice
10:00 to 10:15	Break
10:15 to 11:25	Open Discussion
11:25 to 11:30	Close

GENERAL TOPICS (Including but not limited to)

- Application of the "adequate protection" concept in practice, and the Commissioner's thoughts on the Commission's direction with respect to the Fukushima Orders.
- Procedural issues with the Fukushima Orders
 - Lack of prior planning by NRC Staff in establishing processes to receive 10 day responses, to inform licensees that requests for hearing were received, and for establishing clear procedural rules for filing of replies.
- Recent Commission actions on Combined Operating Licenses and its handling of post-Fukushima regulatory actions
 - Use of license conditions versus orders for Fukushima requirements
 - Commission efficiencies in issuing the mandatory hearing order
 - Commission efficiencies in the mandatory hearing process
- Recent staff activities regarding Foreign Ownership Control or Domination. In several recent licensing actions, the NRC staff has taken positions interpreting the Foreign Ownership Control or Domination provisions of the AEA (sections 103 and 104) more conservatively. Industry believes that these interpretations are inconsistent with the intent of the AEA and a minimum constitute backfits because of a change in position.
- NRC's Plans for dealing with a possible Remand on Waste Confidence Rule
- Policy/legal issues associated with implementation of Tier 2 and 3 Lessons Learned
 - Maintaining prioritization of and focus on implementation of Tier 1 and operating plant safety

- Ensuring staff actions are consistent with Commission policy direction
- Safety basis for imposing additional Fukushima-related requirements
- Legal considerations in imposing a requirement to install filtered containment vents
 - Ability of NRC to rebut prior NRC cost-benefit analyses (e.g. 1989 Generic Letter environmental assessment and various SAMDA analyses in license renewals)
 - Safety benefit of filtered vents in light of other Fukushima-related measures, and NRC's ability to justify further safety enhancements. This implicates the issue raised in the recent report of the NRC's Risk Management Task Force – "how much defense-in-depth is enough?" How can risk insights be used to make sound decisions on additional enhancements in the aftermath of an event like Fukushima?
 - If additional defense-in-depth is necessary, will the Commission be open to consideration of methods – other than filtered vents – to further reduce the likelihood of significant land contamination in the event of core damage?
- Cost-benefit considerations role in the NRC's regulatory processes:
 - Should cost-benefit analysis play more of a role in agency decision-making generally, outside of specific application in provisions like the various backfitting provisions contained in 10 C.F.R.? Even in situations where adequate protection considerations are involved, the backfit rule encourages the Commission to impose performance-based requirements where possible, and allows cost/benefit considerations to be factored into more prescriptive regulatory decisions – so long as adequate protection is ultimately ensured. Given that the concept of "adequate protection" evades specific definition, should cost-benefit analysis and consideration of risk play more of a role in the agency's regulatory decision-making process?
 - Should the NRC maintain its current regulatory analyses standards, which generally focus the NRC's analysis on the safety benefit of new requirement (e.g. reduction in Core Damage Frequency) rather than other non-safety-related considerations?
- The use of a Technical Interface Agreement to announce a new NRC position (required use of General Design Criteria to determine operability of Technical Specification equipment).

Sexton, Kimberly

From: Sexton, Kimberly
Sent: Wednesday, May 02, 2012 10:52 AM
To: 'ZORN, Jason'
Subject: RE: Proposed Agenda for Commissioner O's Roundtable Discussion

Jason,

That sounds fine. I'm putting you on the calendar for 1pm. Feel free to give me a call.

Thank you,
Kimberly

From: ZORN, Jason [mailto:jcz@nei.org]
Sent: Wednesday, May 02, 2012 10:48 AM
To: Sexton, Kimberly
Subject: RE: Proposed Agenda for Commissioner O's Roundtable Discussion

Kimberly – I have to leave the office at around 2 today, so why don't we try to talk around 1? Thanks for getting this back to me. -- Jason

From: Sexton, Kimberly [mailto:Kimberly.Sexton@nrc.gov]
Sent: Wednesday, May 02, 2012 10:41 AM
To: ZORN, Jason
Subject: RE: Proposed Agenda for Commissioner O's Roundtable Discussion

Jason,

I have discussed the proposed agenda and topics with Commissioner Ostendorff and we would propose the following modification that would better support the presentation:

AGENDA

9 to 9:05	Introduction of Commissioner Ostendorff and Attendees
9:05 to 10:15	Commissioner Ostendorff Presentation on Topics of his Choice
10:15 to 10:30	Break
10:30 to 11:25	Open Discussion
11:25 to 11:30	Close

If you are available today, I would like to discuss the list of topics for open discussion. My only conflict today is from 2:30-3:30.

Also, Commissioner Ostendorff would like to use slides for his part of the presentation. Would that be possible in the planned venue?

Thank you,

Kimberly

Kimberly A. Sexton
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(b)(6) (mobile)
(301) 415-1757 (fax)
Kimberly.Sexton@nrc.gov

From: ZORN, Jason [mailto:jcz@nei.org]
Sent: Monday, April 30, 2012 12:13 PM
To: Sexton, Kimberly
Subject: Proposed Agenda for Commissioner O's Roundtable Discussion

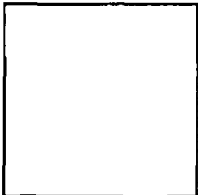
Kimberly

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Jason

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E: jcz@nei.org



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Sexton, Kimberly

From: Sexton, Kimberly
Sent: Thursday, May 03, 2012 10:04 AM
To: 'ZORN, Jason'
Subject: RE: Proposed Agenda for Commissioner O's Roundtable Discussion

Thanks Jason.

From: ZORN, Jason [mailto:jcz@nei.org]
Sent: Wednesday, May 02, 2012 3:13 PM
To: Sexton, Kimberly
Subject: Re: Proposed Agenda for Commissioner O's Roundtable Discussion

Kimberly.

Please let the Commissioner know that we are inquiring about parking. It doesn't appear that there is free parking available in Winston's building. All day parking is \$17, but we're trying to find out if there is a weekly rate. I don't recall I we're allowed under the ethics rules to pay for that parking since he's an invited guest, but you might want to check on that.

Jason

On May 2, 2012, at 10:46 AM, "Sexton, Kimberly" <Kimberly.Sexton@nrc.gov> wrote:

Jason,

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Kimberly

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2012-04-30 12:13 PM

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Sexton, Kimberly

From: ZORN, Jason [jcz@nei.org]
Sent: Monday, May 07, 2012 10:19 AM
To: Sexton, Kimberly
Subject: Agenda
Attachments: Agenda for May 10 2012 Roundtable with Commissioner Ostendorff.pdf

Kimberly

A copy of the final agenda is attached. We have the AV set up for the location and will have a laptop available. Let me know whether you want me to get it set up in advance, or you just want to bring it via thumb drive the day of. Either way works. I will try to make sure someone is in the lobby to meet you all. Winston is very easy to get to from the metro. It's caddy-corner from the K street exit of Farragut North. Let me know if you have any other questions/concerns about logistics.

Jason

Jason Zorn
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**NEI ROUNDTABLE
WITH COMMISSIONER OSTENDORFF**

May 10, 2012

AGENDA

- 9:00-9:05 a.m.** Introduction
- 9:05-10:15 a.m.** I. Commissioner Ostendorff's Presentation and Discussion
- Commission votes on SECY-12-0025 (Fukushima orders)
 - Commission actions on the Vogtle and Summer COLs
- 10:15-10:30 a.m.** **BREAK**
- 10:30-11:25 a.m.** II. Open Discussion
- Consideration of filtered containment vents
 - Consideration of economic consequences of land contamination
 - Other issues
- 11:25-11:30 a.m.** III. Close/Final Remarks
- 11:30-1:30 p.m.** IV. Lunch/Follow-on Discussion

Sexton, Kimberly

From: ZORN, Jason [jcz@nei.org]
Sent: Tuesday, May 08, 2012 8:06 AM
To: Sexton, Kimberly
Subject: RE: Agenda
Attachments: Roundtable Attendees.doc

List of confirmed attendees attached. Including the 4 of us at NEI, there are a total of 13 attendees. There are 5 others on the list of non-responses, but I don't know their names. Please keep this list to yourself or the Commissioner, as I added some additional notes about people who I know something about as additional background. Hopefully this helps. Let me know what else you need.

Jason

From: Sexton, Kimberly [mailto:Kimberly.Sexton@nrc.gov]
Sent: Monday, May 07, 2012 6:31 PM
To: ZORN, Jason
Subject: RE: Agenda

That's very helpful. We would be interested in the list of attendees.

Thanks,
Kimberly

From: ZORN, Jason [mailto:jcz@nei.org]
Sent: Monday, May 07, 2012 4:59 PM
To: Sexton, Kimberly
Subject: RE: Agenda

Hey Kimberly

No problem. I agree about not sending out another agenda. It was just meant as a general guideline about what to expect.

As for the audience, we're expecting about 20 people to attend, including the 4 of us at NEI. The level of familiarity with this group should be very high, so I would not expect there to be a need to reiterate the history of much of the decision-making. Most/all of the attendees are very senior attorneys either from utilities or law firms, and have been pretty involved in the post-Fukushima activities. I can get you a specific list of attendees if you think it would be helpful.

Jason

From: Sexton, Kimberly [mailto:Kimberly.Sexton@nrc.gov]
Sent: Monday, May 07, 2012 4:53 PM
To: ZORN, Jason
Subject: RE: Agenda

Thanks Jason. We've broadened the scope of the first presentation to all Post-Fukushima Actions, but I don't think you necessarily need to send out an updated agenda unless you want to.

Two quick questions as we refine the presentation: (1) how many people are you expecting and (2) what is their level of familiarity with the series of post-Fukushima SECY papers?

Thank you,
Kimberly

From: ZORN, Jason [mailto:jcz@nei.org]
Sent: Monday, May 07, 2012 10:19 AM
To: Sexton, Kimberly
Subject: Agenda

Kimberly

A copy of the final agenda is attached. We have the AV set up for the location and will have a laptop available. Let me know whether you want me to get it set up in advance, or you just want to bring it via thumb drive the day of. Either way works. I will try to make sure someone is in the lobby to meet you all. Winston is very easy to get to from the metro. It's caddy-corner from the K street exit of Farragut North. Let me know if you have any other questions/concerns about logistics.

Jason

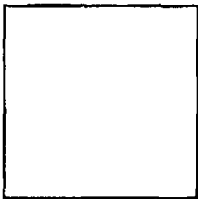
Jason Zorn
Assistant General Counsel
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Washington, DC 20006-3708
www.nei.org

P: 202-739-8144

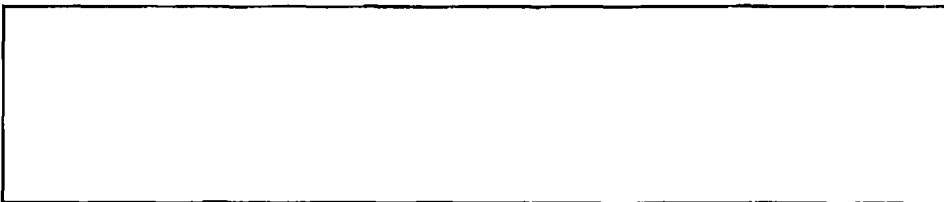
F: 202-533-0106

M: (b)(6)

E: jcz@nei.org



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Sexton, Kimberly

From: ZORN, Jason [jcz@nei.org]
Sent: Wednesday, May 09, 2012 3:43 PM
To: Sexton, Kimberly
Subject: Re: Slides for Tomorrow

Roger. Thanks.

On May 9, 2012, at 3:42 PM, "Sexton, Kimberly" <Kimberly.Sexton@nrc.gov> wrote:

> Jason,
>
> Please disregard the last attachment that I sent you. I just realized there was a slide missing. Use this one.
>
> Thank you,
> Kimberly
>
> From: Sexton, Kimberly
> Sent: Wednesday, May 09, 2012 3:35 PM
> To: 'ZORN, Jason'
> Subject: Slides for Tomorrow
>
> Jason,
>
> Attached are Commissioner Ostendorff's slides for tomorrow morning's roundtable. I will also be bringing them
on a thumb drive as a back-up.
>
> Thank you,
>
> Kimberly A. Sexton
> Legal Counsel
> Office of Commissioner William C. Ostendorff U.S. Nuclear Regulatory
> Commission
> (301) 415-3599 (office)
> (b)(6) (mobile)
> (301) 415-1757 (fax)
> Kimberly.Sexton@nrc.gov
>
> <2012-05-10 Lawyers' Roundtable WON.pptx>

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Sexton, Kimberly

From: Sexton, Kimberly
Sent: Thursday, May 17, 2012 6:00 PM
To: Ellen Ginsberg
Subject: RE: Letter of Appreciation

Ellen,

Thank you very much for your kind words. It was a pleasure seeing you again and working with you and your staff. I was quite pleased with how it all came together and with the depth and breadth of the discussion. I feel confident in saying it was informative for all involved.

I as well look forward to working with you again,
Kimberly

Kimberly A. Sexton
Legal Counsel
Office of Commissioner William C. Ostendorff
U.S. Nuclear Regulatory Commission
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(b)(6) (mobile)
(301) 415-1757 (fax)
Kimberly.Sexton@nrc.gov

From: BENJAMIN, Melissa [<mailto:mb@nei.org>]
Sent: Thursday, May 17, 2012 4:12 PM
To: Sexton, Kimberly
Cc: GINSBERG, Ellen; ZORN, Jason; BENJAMIN, Melissa
Subject: Letter of Appreciation

Ms. Sexton ~

Please see the attached from Ellen Ginsberg.

Best regards.

Melissa Benjamin

Melissa Akar Benjamin
Legal Secretary
Nuclear Energy Institute
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nuclear. clean air energy.

"Be a yardstick of quality.
Some people aren't used to an environment
where excellence is expected."

Steve Jobs

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Sexton, Kimberly

From: GINSBERG, Ellen [ecg@nei.org]
Sent: Wednesday, July 18, 2012 11:47 AM
To: Sexton, Kimberly
Cc: Herr, Linda
Subject: RE: Drop-In with Commissioner Ostendorff

Hi Kimberly,

Thanks for your email. I appreciate the opportunity to discuss the foreign ownership and FQ issues with the Commissioner and look forward to hearing from Linda to schedule a mutually agreeable time. With respect to the on-going proceedings, please assure the Commissioner that our discussion will be limited to generic issues associated with foreign ownership and FQ. Again, I appreciate your follow-up on my request.

Best,
Ellen

Ellen Ginsberg
Vice President, General Counsel and Secretary
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E: ecg@nei.org

From: Sexton, Kimberly [<mailto:Kimberly.Sexton@nrc.gov>]
Sent: Wednesday, July 18, 2012 11:33 AM
To: GINSBERG, Ellen
Cc: Herr, Linda
Subject: Drop-In with Commissioner Ostendorff

Ellen,

My apologies for taking a few days to get back with you. Commissioner Ostendorff is happy to schedule a drop-in with you regarding foreign ownership and financial assurance (which are the two topics I believe that you would like to discuss). As I'm sure you are aware, there are currently three proceedings with active contentions on these issues (FOCD in the South Texas and Calvert Cliffs COL proceedings and financial assurance in Honeywell). Therefore, please be aware that Commissioner Ostendorff will need the conversation to stay at a generic level, without getting into the specifics of any licensing action.

Linda Herr will be in touch to schedule the meeting date and time.

Thank you,

Kimberly A. Sexton
Legal Counsel

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U.S. Nuclear Regulatory Commission
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(301) 415-1757 (fax)
Kimberly.Sexton@nrc.gov

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Bielecki, Jessica

From: Bielecki, Jessica
Sent: Friday, August 24, 2012 3:37 PM
To: ZORN, Jason
Subject: RE: Congratulations!

Hi Jason,

(b)(6)

Jessica

From: ZORN, Jason [<mailto:jcz@nei.org>]
Sent: Thursday, August 23, 2012 11:00 AM
To: Bielecki, Jessica
Subject: Congratulations!

Hi Jessica

(b)(6)

Jason

Jason Zorn
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Sexton, Kimberly

From: ZORN, Jason [jcz@nei.org]
Sent: Thursday, August 30, 2012 7:25 AM
To: Sexton, Kimberly
Subject: Re: FOIA Question

(b)(5)

On Aug 29, 2012, at 10:10 PM, "Sexton, Kimberly" <Kimberly.Sexton@nrc.gov> wrote:

(b)(5)

Sent from an NRC BlackBerry
Kimberly Sexton

(b)(6)

From: ZORN, Jason <jcz@nei.org>
To: Sexton, Kimberly
Sent: Wed Aug 29 19:50:32 2012
Subject: RE: FOIA Question

(b)(5)

J

From: Sexton, Kimberly [mailto:Kimberly.Sexton@nrc.gov]
Sent: Wednesday, August 29, 2012 3:58 PM
To: ZORN, Jason
Subject: FOIA Question

Jason,

(b)(5)

Thanks!

Kimberly A. Sexton
Legal Counsel
Office of Commissioner William C. Ostendorff

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Sent through mail.messaging.microsoft.com

Castleman, Patrick

From: Castleman, Patrick
Sent: Friday, September 28, 2012 3:19 PM
To: 'KRAFT, Steven'
Subject: RE: Filtering Strategies

Thanks, Steve. I enjoyed speaking with you. Pat

From: KRAFT, Steven [mailto:spk@nei.org]
Sent: Friday, September 28, 2012 3:17 PM
To: Castleman, Patrick
Subject: Filtering Strategies

Pat –

Thanks for the conversation. Here's the letter I mentioned.

Please call if you have any questions.

Steve

Steven P. Kraft
Senior Director
Fukushima Response
Coordination & Strategy

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Sent through mail.messaging.microsoft.com

September 21, 2012

Mr. Joseph E. Pollock, Executive Director
Nuclear Operations
Nuclear Energy Institute
1776 I Street, NW
Washington, DC 20006

SUBJECT: STRATEGIES FOR MITIGATING RADIOLOGICAL RELEASES IN SEVERE ACCIDENTS

Dear Mr. Pollock,

In a letter dated May 15, 2012, the Nuclear Energy Institute (NEI) requested that the U.S. Nuclear Regulatory Commission (NRC) staff evaluate the merits of requiring containment filtered vents as part of a more comprehensive analysis that considers other alternatives for precluding and mitigating potential radiological releases from core damage events. On June 14, 2012, NEI provided an update and additional details on mitigating radiological releases, including some preliminary observations stemming from the industry's evaluations. In the June 14th letter, NEI stated that any evaluation of alternatives should include a review of the variety of strategies that are based on existing severe accident management guidelines. The staff understands that the industry has been studying several strategies to retain radionuclides in BWR Mark I and Mark II containments.

On August 8, 2012, the Electric Power Research Institute (EPRI) participated in a public meeting with the NRC staff. EPRI presented information on computer modeling and analysis conducted to support potential strategies for mitigating radiological releases in severe accidents in Mark I and Mark II containments. The EPRI modeling and analysis were intended to support demonstration that decontamination factors greater than 1000 were achievable, predominately through existing design features and operator actions, such as optimally timed and repeated operation of wetwell and drywell vent paths. However, the feasibility of successfully executing such an approach with a high degree of reliability in a severe accident environment, including consideration of potential operator errors and equipment failures, would need to be demonstrated by industry to provide NRC with reasonable assurance that such decontamination factors are achievable. In addition, topics such as the necessary instrumentation, training, and procedures would need to be discussed, along with the range of potential accident sequences and attendant conditions to which this filtering strategy applies. Additionally, the potential for hydrogen gas buildup in the venting line, as a result of condensation of water vapor between repeated venting cycles, would also need to be resolved.

J. Pollock

- 2 -

The staff supports a holistic approach to severe accident management for Mark I and Mark II containments to further enhance defense-in-depth and addresses the uncertainties in the likelihood of accidents, human performance, and the plant's response. We look forward to receiving the ERPI report when it becomes available, and if the industry has alternative filtering strategies supported by sufficient information to provide reasonable assurance that a decontamination factor of 1000 are achievable, we will consider the industry's input as we develop the notation vote paper for the Commission. To ensure timely consideration of any industry strategies or proposals, we request that you provide any additional information by October 5, 2012. Please do not hesitate to contact me if you have any questions.

Sincerely,

/RA by Robert M. Taylor for/

David L. Skeen, Director
Japan Lessons-Learned Project Directorate
Office of Nuclear Reactor Regulation

cc: S. Kraft

Castleman, Patrick

From: SCHLUETER, Janet [jrs@nei.org]
Sent: Wednesday, October 03, 2012 11:17 AM
To: Kinneman, John
Subject: NEI DPR letter
Attachments: 02-10-12_NRC_Comments on Draft Regulatory Guide DG-4014.pdf; SRM on SECY-09-0042 Decommiss Plann Rule.pdf

Importance: High

John – As we discussed yesterday during my drop in. NEI has NEVER received a response to our February letter – see last paragraph which requested an extension of the implementation date. FCFs are growing increasingly concerned with the lack of guidance on how to comply with the DPR that goes into effect in December 2012. The Commission offices (particularly Svinicki and Magwood) were firm in their direction to staff that the final guidance be available in advance of the final rule effective date....that is not happening. See attachment to SRM. Stakeholders also do not have access to the latest version of the guidance that the staff is apparently working to finalize, based on discussions between Kathy Yhip of NEI and Jim Shepherd, DWMEP. NEI has been very patient on this matter.....perhaps too much so.

NEI is considering contacting the EDO on this matter this week. Thanks for any internal NRC coordination that you can offer. I am trying to get in touch with Larry Camper too.

Janet R. Schlueter
Director, Fuel and Materials Safety
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Ralph L. Andersen, CHP
SENIOR DIRECTOR
RADIATION SAFETY & ENVIRONMENTAL PROTECTION
NUCLEAR GENERATION DIVISION

February 10, 2012

Ms. Cindy K. Bladey
Chief, Rules, Announcements, and Directives Branch (RADB)
Office of Administration
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

Subject: Comments on Draft Regulatory Guide DG-4014, "Decommissioning Planning During Operations" (Docket ID NRC-2011-0286)

Project Number: 689

Dear Ms. Bladey:

The Nuclear Energy Institute (NEI)¹ is pleased to provide these comments on Draft Guide-4014 ("DG-4014"), which provides guidance on implementation of the Decommissioning Planning Rule (76 Fed. Reg. 35,512; June 17, 2011)("DPR"). The nuclear industry is firmly committed to planning, funding, and conducting decommissioning of licensee facilities safely, efficiently, and in a manner protective of public health and the environment. Further, the industry believes that NRC regulations should, and currently do, contain appropriate requirements to provide reasonable assurance that legacy sites will be prevented.

¹ NEI is responsible for establishing unified nuclear industry policy on matters affecting the nuclear energy industry, including regulatory, financial, technical and legislative issues. NEI members include all companies licensed to operate commercial nuclear power plants in the United States, nuclear plant designers, major architect/engineering firms, fuel fabrication facilities, materials licensees, and other organizations and individuals involved in the nuclear energy industry.

NEI submitted extensive comments on the draft DPR and a previous version of DG-4014.² Although the current draft of DG-4014 represents a substantial improvement compared to the previous version, there are several issues that we believe must be addressed before the document is finalized. First, DG-4014 must be clarified to ensure that it does not result in a *de facto* codification of the industry's voluntary Groundwater Protection Initiative ("GPI").³ Otherwise, the guidance may have the effect of incorporating the GPI into the NRC's regulatory framework – despite the Commission's express direction to the contrary.⁴ The nuclear power industry remains fully committed to voluntary implementation of the GPI; however, unintentional codification of the GPI would be contrary to the Commission's direction in this area and would undermine the backfitting arguments used by the NRC to justify imposition of the DPR without performing the analysis required by 10 C.F.R. § 50.109(a)(3). Second, although the backfit discussion provided in the Federal Register notice accompanying DG-4014 may be accurate in certain cases, we believe that it is potentially overbroad and could lead to an inappropriately rote treatment of backfitting issues if adopted by the staff as boilerplate.⁵ Third, DG-4014 should be clarified to ensure that it does not function to limit licensees' ability to use the provisions of Part 20 that allow license termination under restricted conditions (10 C.F.R. § 20.1403) or alternate criteria (10 C.F.R. § 20.1404). Each of these comments is discussed in greater detail below. Finally, we raise several more specific comments and requests for clarification in Section IV below.

I. Without Further Clarification, DG-4014 Could Result in a *De Facto* Codification of the Voluntary GPI.

DG-4014 presents relatively straight-forward implementation guidance for nuclear power plant licensees – that is, continue implementing the groundwater protection programs called for in NEI-07-07 and, generally, no further action will be required in order to comply with the DPR. While this guidance provides simplicity and clarity for nuclear power plant licensees, it also creates an environment where – in practice – licensee compliance with the voluntary GPI may become a *de facto* prerequisite to compliance with 10 C.F.R. Part 20.

² See "RIN 3150-AH45: Comments for Decommissioning Planning Rulemaking and Guidance Documents," May 8, 2008 (NEI Comment Letter).

³ NEI-07-07, "Industry Ground Water Protection Initiative – Final Guidance Document," August 2007.

⁴ See e.g., Staff Requirements – SECY-11-0019 – Senior Management Review of Overall Regulatory Approach to Groundwater Protection, August 15, 2011 (directing the staff to monitor the industry's implementation of the GPI, but not to regulate it).

⁵ See "Decommissioning Planning During Operations: Draft regulatory guide; request for comment," 76 Fed. Reg. 77431 (Dec. 13, 2011)(DG-4014).

During the notice and comment period on the DPR, NEI raised serious concerns that the rule was codifying the voluntary GPI.⁶ The NRC responded to this concern, stating:

The final rule does not codify the actions that power reactor licensees are performing voluntarily under the GPI. New 10 CFR 20.1406(c) requires power reactor licensees to conduct their operations, to the extent practical, to minimize the introduction of residual radioactivity into the site, including the subsurface. The GPI does not specify licensee activities to minimize contamination at the site. Revised 10 CFR 20.1501(a) specifies that survey and monitoring requirements must be performed of residual radioactivity in areas, including the subsurface, that are potential radiological hazards. This final rule identifies significant residual radioactivity at the site as a potential radiological hazard. This specification of survey and monitoring requirements is not part of the GPI.⁷

The idea that the GPI should remain voluntary was confirmed in several Staff Requirements Memoranda issued after publication of the DPR, in which the Commission repeatedly stressed the voluntary nature of the GPI and expressly declined to incorporate the GPI into the regulatory framework. For example, in SRM-SECY-11-0019 "Senior Management Review of Overall Regulatory Approach to Groundwater Protection" the Commission stated:

The Commission has approved the SMRG recommendation not to incorporate the voluntary industry initiative on groundwater protection into the regulatory framework. The staff should, instead, monitor the effectiveness of the industry initiatives.

The staff should make it clear in its stakeholder engagements that, while the agency will continue to monitor the industry's voluntary initiatives, no changes to the regulatory framework are currently being contemplated. The staff is cautioned to remember that its purpose is to monitor these efforts, not to regulate them.⁸

Indeed, the Commissioners' vote sheets on SECY-11-0019 reveal a significant concern that assessment of the voluntary GPI through formal regulatory programs, like the Reactor Oversight Process (ROP), could result in imposition of a de facto rule imposing the GPI. For example, Commissioner Svinicki stated:

The SMRG concluded that incorporating the industry program into the regulations would not improve safety, and it therefore would not meet the cost-benefit backfit provisions of 10 CFR § 50.109. Nevertheless, the staff plans to issue a generic communication regarding leaks and spills onsite in order to convey its observation that the industry programs are providing

⁶ See 76 Fed. Reg. 35,532 (explaining NEI's comment that "the proposed [DPR] would codify in the regulations for power reactor licensees the actions which such licensees have voluntarily agreed to perform under the GPI.").

⁷ 76 Fed. Reg. 35,533 (emphasis added).

⁸ "Staff Requirements – SECY-11-0019 – Senior Management Review of Overall Regulatory Approach to Groundwater Protection," Aug. 15, 2011.

more active management of situations that can lead to unplanned releases, and to inform licensees that the staff plans to continue to assess the effectiveness of the programs through the ROP. However, I am concerned that this approach will amount to implementing a de facto rule.⁹

Although supporting continued evaluation of the voluntary GPI via the ROP, Commissioner Ostendorff shared Commissioner Svinicki's concern, stating:

[W]hile I support the staff's plans to issue a generic communication on leaks and spills, I share Commissioner Svinicki's concern that, such guidance, if not clear, may create "de facto" regulations. The staff should make it clear in the generic communication that, while the agency will continue to evaluate the industry's voluntary initiatives through the ROP, no changes to the regulatory framework are currently being contemplated.¹⁰

Commissioner Magwood also expressly recognized that the staff's continued monitoring of the voluntary GPI created a potentially "slippery slope," and cautioned the staff to "remember that its purpose is to monitor these efforts, not to regulate them."¹¹

In a subsequent Staff Requirements Memorandum dealing specifically with proposed changes to the public radiation safety cornerstone of the ROP, the Commission stressed that the staff's efforts in the area of groundwater and environmental monitoring should continue to focus on compliance with the agency's regulatory requirements:

The Commission has approved the staff's commitment to work with internal and external stakeholders on potential enhancements to the performance indicator program, but has not approved changes to the radiological effluent performance indicator or other modifications to the reactor oversight process (ROP) related to groundwater contamination control at this time. NRC inspections of groundwater and environmental monitoring and radioactive effluents should continue to focus on assessing licensee compliance with NRC regulatory requirements.¹²

⁹ "Commission Voting Record, Senior Management Review of Overall Regulatory Approach to Groundwater Protection: Commissioner Svinicki's Comments SECY-11-0019," May 23, 2011.

¹⁰ "Commission Voting Record, Senior Management Review of Overall Regulatory Approach to Groundwater Protection: Commissioner Ostendorff's Comments SECY-11-0019," June 27, 2011.

¹¹ "Commission Voting Record, Senior Management Review of Overall Regulatory Approach to Groundwater Protection: Commissioner Magwood's Comments SECY-11-0019," June 6, 2011.

¹² "Staff Requirements – SECY-11-0076 – Improving the Public Radiation Safety Cornerstone of the Reactor Oversight Process," November 8, 2011 (emphasis added).

Without additional clarification, DG-4014 could have the unintended effect of imposing a de facto requirement for nuclear power plant licensees to implement the groundwater protection programs called for in NEI-07-07 – despite the Commission’s direction to the contrary. Specifically, although DG-4014 contains useful boilerplate language regarding the effect of Regulatory Guides (i.e., “unless this regulatory guide is part of the licensing basis for a facility, the staff may not represent to the licensee that the licensee’s failure to comply with the positions in this regulatory guide constitutes a violation.”), given the history described above, further explanation of how the staff will proceed if a licensee is not adequately implementing the voluntary GPI is needed.

In addition to potentially running afoul of the Commission’s direction in this area, allowing DG-4014 to result in a de facto codification of the voluntary GPI would undermine the justification used by the NRC to avoid performing a backfit analysis prior to imposing the DPR. Specifically, during the rulemaking process NEI vigorously argued that the imposition of the DPR constituted a backfit and required justification via the analysis required under 10 C.F.R. § 50.109(a)(3). The NRC disagreed, stating:

This is not a backfit because it clarifies licensee requirements under existing regulations applicable to licensed operations. The current § 20.1101(a) requires each licensee to implement a radiation protection program to ensure compliance with the regulations in 10 CFR part 20. The current § 20.1101(b) requires each licensee to use, to the extent practical, procedures and engineering controls based upon sound radiation protection principles to achieve occupational doses and doses to members of the public that are ALARA, during operations and during decommissioning. These operating procedures and controls need to include methods to minimize the introduction of residual radioactivity into the site, including the subsurface, during active facility operations to achieve doses that are ALARA. Otherwise, licensees will lack a substantive basis to demonstrate that they have achieved, during the life cycle of the facility (which includes decommissioning), public and occupational exposures that are ALARA. . . .

Licensees should already have these procedures in place as part of their radiation protection program, and 10 CFR 20.1406(c) clarifies this requirement.¹³

Likewise, in addressing the changes to § 20.1501, the NRC stated:

The amended 10 CFR 20.1501(a) replaces the undefined term “radioactive material” with “residual radioactivity,” a term already defined in 10 CFR part 20. As defined in existing 10 CFR 20.1003, residual radioactivity includes subsurface contamination within its scope, and the word “subsurface” is being added to 10 CFR 20.1501(a). The current 10 CFR 20.1501(a)(2)(iii) already requires the evaluation of potential radiological hazards. Thus, as amended, 10 CFR 20.1501(a) makes clear that subsurface residual radioactivity is a potential radiological hazard that is within the scope of these survey requirements. This clarification

¹³ 76 Fed. Reg. 35,563.

of existing requirements does not represent a new NRC position and therefore does not fall within the definition of backfitting as set forth in the applicable backfitting regulations.¹⁴

In essence, the NRC's response to NEI's backfitting arguments was that the DPR was clarifying existing requirements, not imposing new or amended requirements. Thus, the changes were not backfits. At the same time, the discussion provided above makes it clear that the Commission does not consider implementation of the GPI to be required by the DPR or any other provision in Part 20 – thus, its imposition could not have been subsumed by, or included in, whatever clarification was offered by the DPR. De facto imposition of the GPI via misapplication of DG-4014 would, therefore, directly undermine the NRC's justification for not performing a backfit analysis prior to imposing the DPR by, in fact, imposing a new or amended requirement, rather than articulating a clarification of an existing requirement. This would be especially problematic here, as the Senior Management Review Group (SMRG) assembled by the Executive Director for Operations to review the agency's overall regulatory approach to groundwater protection has concluded:

[I]n view of the progress being made by industry in protecting groundwater, rulemaking or some other form of regulatory requirement to codify the voluntary initiatives would not result, at this time, in a substantial increase in the overall protection of the public health and safety.¹⁵

As Commissioner Svinicki points out in her vote on SECY-11-0019, the SMRG's conclusion indicates "that incorporating the voluntary GPI into the regulations would not improve safety, and therefore would not meet the cost-benefit provisions of 10 CFR § 50.109."¹⁶ Thus, de facto imposition of the GPI would not only impose an unanalyzed backfit, but would impose an unanalyzed backfit that senior NRC management has concluded is very unlikely to survive the analysis required by § 50.109.

In order to avoid this result, the following qualifying language should be added to the "Implementation" section of DG-4104:

While the NRC believes that implementation of the voluntary GPI will result in compliance with the requirements of §§ 20.1406 and 20.1501, the GPI and NRC's regulatory requirements are not completely coextensive. The GPI represents an effort by industry that goes beyond regulatory requirements for protection of public health and safety and the environment. Although public health and safety and environmental protection are enhanced through implementation of the GPI, the initiative is also focused on improving communication with public stakeholders and increasing public confidence. Thus, the groundwater protection programs implemented pursuant to the GPI are more expansive

¹⁴ Id.

¹⁵ "Senior Management Review of Overall Regulatory Approach to Groundwater Protection," SECY-11-0119, Feb. 9, 2011, at pg. 3.

¹⁶ "Commission Voting Record, Senior Management Review of Overall Regulatory Approach to Groundwater Protection: Commissioner Svinicki's Comments SECY-11-0019," May 23, 2011.

than what is required by §§ 20.1406 and 20.1501 and failure to implement all or part of the voluntary GPI does not equate to a violation of 10 C.F.R. Part 20. As the Commission has directed, the NRC staff will continue to monitor the voluntary GPI, but is not to “regulate” implementation of the GPI. Further, any enforcement action must be based on failure to adhere to the Commission’s regulations, not on a failure to implement the GPI. Finally, the NRC recognizes that GPI was written to provide licensees with substantial implementation flexibility and that the industry may modify the initiative without prior NRC approval. This guidance document is not intended to reduce such flexibility or to require prior NRC approval of any changes to the GPI.

Although we offer this language to carefully qualify and limit use of the GPI as a compliance tool, we note that the specific actions nuclear power plant licensees must take to comply with the DPR survey and monitoring requirements remain unclear. For example, despite the fact that the agency has stressed that the GPI is not being imposed on power plant licensees and that the DPR did not impose new or amended requirements, DG-4014 states “[f]or nuclear power plants, existing radiological monitoring programs and subsurface (ground water) monitoring conducted by implementation of [NEI’s] Ground Water Protection Initiative . . . is generally considered adequate to meet the DPR.”¹⁷ Thus, contrary to the justification provided in the DPR for not performing a backfitting analysis, it appears that some new or amended requirements are being imposed beyond what was required prior to issuance of the DPR (i.e., existing radiological environmental monitoring programs).

II. The Backfitting Discussion Provided in the Federal Register Notice Published with DG-4014 is Potentially Overbroad and Should not be Adopted as Boilerplate.

The Federal Register notice published with DG-4014 contains the following discussion:

The statement of considerations for the DPR discussed that rule’s compliance with applicable backfitting provisions (76 FR 35511, at 35562–63). This regulatory guide presents the NRC staff’s first guidance addressing compliance with § 20.1501(a) and (b) and the newly-added paragraph (c) of § 20.1406. The first issuance of guidance on a newly-changed or newly-added rule provision does not constitute backfitting or raise issue finality concerns, inasmuch as the guidance must be consistent with the regulatory requirements in the newly-changed or newly-added rule provisions and the backfitting and issue finality considerations applicable to the newly changed or newly-added rule provisions must logically apply to this guidance. Therefore, issuance of guidance addressing the newly-changed and newly-added provisions of the amended rule does not constitute issuance of “changed” or “new” guidance within the meaning of the definition of “backfitting” in 10 CFR 50.109(a)(1). Similarly, the issuance of the guidance addressing the newly-changed or newly added provisions of the amended rule,

¹⁷ DG-4014, at pg. 3 (emphasis added).

by itself, does not constitute an action inconsistent with any of the issue finality provisions in 10 CFR Part 52. Accordingly, no further consideration of backfitting or issue finality is needed as part of the issuance of this guidance addressing compliance with the newly changed provisions of § 20.1501 and newly-added paragraph (c) of § 20.1406.¹⁸

NEI is concerned that the language contained in the Federal Register notice will be adopted as boilerplate, which will simply propagate the assumption that the guidance in question is consistent with the underlying regulatory requirements. This type of circular reasoning should be avoided. Instead, NEI believes that the proper approach in situations where a regulatory guide presents the NRC staff's first guidance addressing compliance with a new or changed regulatory requirement is for the NRC staff to provide an analysis specifically articulating how, in fact, the guidance is consistent with the newly-changed or newly-added rule provisions in question. Admittedly, such an analysis may yield the conclusion contained in the Federal Register language quoted above. The point here is that such a conclusion should not be foregone, but, rather, should be adequately explained and supported. Indeed, the NEI's comments in Section I above deal with a potential inconsistency between DG-4014, the DPR, and subsequent Staff Requirements Memoranda. Further, if not rectified, this inconsistency would have backfitting implications (see discussion above).

Although unlikely in the case of DG-4014,¹⁹ in situations where interpretive guidance lags behind the effective date of a newly-changed or newly-added rule NEI believes that the NRC staff should perform a separate evaluation of any "applicable staff positions" that have been imposed on licensees between the effective date of the rule and the time that the guidance is finalized. In such situations, it would be inappropriate to simply assume that the NRC has not taken a position on one of its own legally binding regulations. Instead, the staff should carefully review any applicable staff positions and evaluate the backfitting implications of the guidance in light of those positions (e.g., concluding either that the guidance is consistent with the underlying requirement and any applicable staff positions, or that the positions taken in the guidance document – when contrasted with "applicable staff positions" – may result in the imposition of backfits).

Finally, we note that going forward the situation presented by DG-4014 – i.e., draft guidance being issued for comment nearly six months after issuance of the associated final rule – should be rare. Specifically, in its Staff Requirements Memorandum on consideration of the cumulative effects of regulation the Commission stated:

The staff should publish draft guidance with proposed rules and publish final guidance with the final rule. The EDO should promptly inform the Commission of any instances, and the associated reasons, where a proposed rule package will be provided to the Commission

¹⁸ 76 Fed. Reg. 77,431, 77,431-77,432 (Dec. 13, 2011).

¹⁹The effective date of the DPR is December 17, 2012. 76 Fed. Reg. 35,512.

without having completed the draft guidance. Exceptions to this approach should be very limited and approved by the Commission.²⁰

Adherence to this practice will allow both the NRC and other stakeholders to examine interpretive guidance together with the associated draft and final rules, and to more coherently address any backfitting implications posed by the guidance. Industry believes that backfitting implications of any new or amended rule and the associated guidance can be most meaningfully examined when the rule and guidance are published for comment at the same time. In this vein, we note that the opportunity to challenge final rules (i.e., final "orders") in the United States Courts of Appeal runs 60 after issuance.²¹ When issuance of interpretive guidance is delayed, it hinders stakeholders' ability to evaluate potential challenges because specific information on how the rule provisions will be interpreted and applied may not be available until after the time for filing a petition for review has run. Issuing interpretive guidance and rules together will force implementation decisions regarding the meaning of a new or amended requirement to be made and vetted with the public contemporaneously with promulgation of the requirement itself.

III. DG-4014 Should not Unduly Limit Decommissioning Options.

DG-4014 describes the decommission regulations as "requir[ing] licensees to remediate sites to approved release criteria for unrestricted use (unless they can demonstrate the need for restricted use) without regard to the cost."²² NEI disagrees with this characterization of the decommissioning requirements in Subpart E to 10 C.F.R. Part 20 and recommends that this statement be deleted from DG-4014. Further, although the DPR requires non-reactor licensees to periodically modify decommissioning cost estimates to account for remediation of significant residual radioactivity to levels that would permit unrestricted release, the rule also allows such licensees the option of demonstrating that the requirements for restricted release can be met.²³ Similarly, DG-4014 should be modified to clearly state that, if significant residual radioactivity is detected, licensees will have the opportunity to adequately demonstrate that license termination pursuant to restricted conditions (§ 20.1403) or alternate criteria (§ 20.1404) are reasonable options, in lieu of adjusting decommissioning funding levels to allow for unrestricted release.

Subpart E does not require remediation of sites to the release criteria for unrestricted use without regard to the cost. Subpart E to 10 C.F.R. Part 20 presents three options for license termination: (1) decommissioning the site for unrestricted release (§ 20.1402), (2) decommissioning the site for release under restricted conditions (§ 20.1403), and (3) decommissioning the site for release under alternate criteria (§ 20.1404). Although dose criteria are an important part of each of these options,

²⁰ "Staff Requirements – SECY-11-0032 – Consideration of the Cumulative Effects of Regulation in the Rulemaking Process," Oct. 11, 2011.

²¹ 28 U.S.C. §§ 2341-2351.

²² DG-4014, at pg. 5 (emphasis added).

²³ 76 Fed. Reg. 35,517 ("[T]his final rule amends 10 CFR 30.35, 40.36, 70.25, and 72.30 to require licensees to obtain NRC approval of their DFP based on a DCE for unrestricted release, unless the ability to meet the restricted release criteria can be adequately shown.)

in many cases the determination of which option is appropriate, and the derivation of specific decommissioning goals once an option is selected, require application of the ALARA (as low as is reasonably achievable) principal.

Specifically, with respect to unrestricted release, § 20.1402 states:

A site will be considered acceptable for unrestricted use if the residual radioactivity that is distinguishable from background radiation results in a TEDE to an average member of the critical group that does not exceed 25 mrem (0.25 mSv) per year, including that from groundwater sources of drinking water, and the residual radioactivity has been reduced to levels that are as low as reasonably achievable (ALARA). Determination of the levels which are ALARA must take into account consideration of any detriments, such as deaths from transportation accidents, expected to potentially result from decontamination and waste disposal.

Section 20.1403(a) explains that a licensee may terminate its license pursuant to restricted conditions if, in part, it:

[C]an demonstrate that further reductions in residual radioactivity necessary to comply with the provisions of § 20.1402 would result in net public or environmental harm or were not being made because the residual levels associated with restricted conditions are ALARA. Determination of the levels which are ALARA must take into account consideration of any detriments, such as traffic accidents, expected to potentially result from decontamination and waste disposal[.]

License termination pursuant to alternate criteria is also an option (see § 20.1404(a)):

The Commission may terminate a license using alternate criteria greater than the dose criterion of §§ 20.1402, 20.1403(b), and 20.1403(d)(1)(i)(A), if the licensee—

* * * * *

(3) Reduces doses to ALARA levels, taking into consideration any detriments such as traffic accidents expected to potentially result from decontamination and waste disposal.

In turn, ALARA means:

[M]aking every reasonable effort to maintain exposures to radiation as far below the dose limits in this part as is practical consistent with the purpose for which the licensed activity is undertaken, taking into account the state of technology, the economics of improvements in relation to state of technology, the economics of improvements in relation to benefits to the

public health and safety, and other societal and socioeconomic considerations, and in relation to utilization of nuclear energy and licensed materials in the public interest.²⁴

As is clear from this definition, economic considerations – i.e., costs – are relevant in determining whether the projected dose limits and/or residual radioactivity concentrations proposed by a licensee in a decommissioning plan are, in fact, ALARA. Specifically, with respect to evaluations of ALARA in decommissioning space, NUREG-1757, “Consolidated Decommissioning Guidance: Characterization, Survey, and Determination of Radiological Criteria” states:²⁵

NRC staff should review the information supplied by the licensee or responsible party to determine if the licensee has developed a DP that ensures that doses to the average member of the critical group are as low as is reasonably achievable (ALARA). Information submitted should include (a) a cost-benefit analysis (or qualitative arguments) for the preferred option of removing residual radioactivity to a level that meets or exceeds the applicable limit and (b) a description of the licensee’s preferred method for showing compliance with the ALARA requirement at the time of decommissioning.²⁶

NUREG-1757 goes on to explain that:

The information supplied by the licensee should be sufficient to allow NRC staff to fully understand the licensee’s conclusion that the projected dose limit/residual radioactivity concentrations (hereinafter decommissioning goal) are ALARA. The decommissioning goal should be established at the point that the incremental benefits equal the incremental costs.²⁷

Appendix N to NUREG-1757 provides detailed guidance on how to perform ALARA analyses for decommissioning purposes. Thus, contrary to the description provided in DG-4014, it is clear that cost-benefit balancing via the ALARA analysis plays an important role in determining which license termination option is chosen by a licensee, as well as delineating the decommissioning goal once an option is selected. This approach to license termination protects public health and safety by ensuring that the dose consequences, as well as other relevant factors associated with decommissioning activities (e.g., traffic fatalities), are adequately considered – while providing maximum flexibility so that the decommissioning approach can be tailored on a site-specific basis.

²⁴ 10 C.F.R. § 20.1003 (emphasis added).

²⁵ Although NUREG-1757 deals primarily with decommissioning of materials sites, Revision 1 of NUREG-1700, “Standard Review Plan for Evaluating Nuclear Power Reactor License Termination Plans,” contains a cross-reference to the ALARA guidance provided in NUREG-1757. NUREG-1700, at pg. 13.

²⁶ NUREG-1757, Vol. 2, rev. 1, at 6-1 (emphasis added).

²⁷ Id. (emphasis added).

IV. Additional, Specific Comments.

- **DG-4014 provides little guidance for non-reactor licensees.** DG-4014 provides little guidance for non-reactor licensees that are required to provide financial assurance. Specifically, if these licensees have had unplanned releases or utilize fluid processes they will be required to:

- Identify any unmonitored areas in buildings or outside where spills or leaks could occur; and
- Identify any unmonitored areas on-site where effluents could concentrate

But the draft guide provides no detailed guidance on acceptable methods or approaches that non-reactor licensees can use to identify such areas. As DG-4014 points out, identification of such areas may be complicated by the fact that some areas where significant residual radioactive materials may be present may not be accessible because of the physical layout of systems and structures. The draft guide states that surrogate monitoring (e.g., sentinel monitoring locations) may be appropriate in these circumstances, but offers no further guidance on this topic. This leaves non-reactor licensees largely in the dark with respect to the agency's expectations in this area. In addition, DG-4014 provides little guidance for such licensees on the extent of monitoring and surveillance necessary to address unmonitored areas. This is especially problematic because, as the draft guide highlights, for many licensees, changes to monitoring and surveillance plans will require license amendments.²⁸ The NRC should clarify its expectations in this area.

- **The presence of "fluid processes" alone should not require review under the DPR.** DG-4014 states that non-reactor licensees that are required to provide financial assurance must conduct a more detailed review if there are any "fluid processes" at the site. NEI believes that the radiological pedigree of those processes, as well as existing engineering controls, should be considered in deciding whether a more detailed review is necessary under the DPR. More specifically, there may be licensees required to provide decommissioning funding assurance at a site where fluid processes are employed, but those processes may not utilize materials that present a concern from a decommissioning planning standpoint. For example, the fluid component of a licensee's possession profile may be limited to inert gases or radionuclides with relatively short half-lives, in which case there would be no decommissioning planning concern. Figure 2 should be revised so that if the question "Are there any fluid processes at the site?" is answered "yes," the following factors can be considered, prior to sending the licensee to Figure 3a:
 - Is the fluid component of the licensee's possession profile limited to a quantity of radioactive material below which would require decommissioning

²⁸ See DG-4014, at pg. 9.

funding assurance, as specified in §§ 30.35(d), 40.36(b), or 70.25(d)? If yes, no further review is required under the DPR.

- Is the fluid component of the licensee's possession profile limited to radionuclides that have half-lives of less than 120 days? If yes, no further review is required under the DPR.
 - Are there engineering provisions in place that eliminate or significantly reduce the likelihood of an unplanned release resulting in a significant environmental impact (e.g., above ground facilities; double containment of vessels, ducts and plumbing; leak detection in liquid containment)? If yes, no further review is required under the DPR.
- **Clarify or define terms, such as "action or regulatory limits" and "release limits."** These terms are ambiguous and are used at several important points in DG-4014. For example, Figure 3b asks whether detected contamination is "greater than action or regulatory limits?" It is unclear which "limits" the NRC is referencing. Also, the description of Figure 2 on page A-1-3 references a situation where planned discharges are within regulatory limits, but concentrate to greater than "release limits." It is unclear what "release limits" the NRC believes may be exceeded and how those limits are relevant to implementation of the DPR. NEI requests clarification of these terms.
 - **"Available sources" that can be used to estimate the amount of significant residual radioactivity should be explored and explained in greater detail.** One substantial challenge associated with implementation of the DPR will be determining whether residual radioactivity present now will require remediation in order to meet the unrestricted release criteria at some point in the distant future when decommissioning occurs. Although DG-4014 references several sources of information that could potentially inform this analysis (e.g., Appendix B to 10 C.F.R. Part 20),²⁹ the document does not provide any meaningful guidance on how licensees should go about making this determination. For example, page 14 of DG-4014 includes a list of "available sources" to assist licensees in estimating the amount of residual radioactivity present, which includes a reference to tables 1, 2, and 3 of Appendix B to 10 C.F.R. Part 20. This reference includes a somewhat cryptic parenthetical statement indicating that "half the table values equates to 25 millirem/year." The explanation of Table 2 in Appendix B states that the concentration values in columns 1 and 2 "radionuclide concentrations which, if inhaled or ingested continuously over the course of a year, would produce a total effective dose equivalent of . . . 50 millirem." Given the assumption of continuous inhalation or ingestion, it is unclear how halving the values in table 2 would equate to receipt of a TEDE of 25 millirem/year by an average member of the critical group, which is the dose receptor of interest for decommissioning purposes. Also, it is unclear how "half of the table values" for Tables 1 (occupational ALIs and DACs) and 3

²⁹See DG-4014, at pg. 14.

(sewer disposal) "equates to 25 millirem/year." The discussion of "available sources" needs to be substantially expanded to include an articulation of the NRC staff's views on how these sources can be used to determine whether residual radioactivity is "significant."

- **The term "significant residual radioactivity" should be clarified.** The NRC should clarify that the term "significant residual radioactivity" should not be interpreted to mean that the existence of contamination that could require remediation in order to meet the unrestricted release criteria at some future date (if the licensee chooses that decommissioning option) is significant from a public health and safety standpoint. As described in Section III above, the NRC's license termination rule provides several ALARA-based options for decommissioning of nuclear facilities. A number of these options (restricted release and release in accordance with alternate criteria), permit estimated doses that exceed the 25 mrem/year total effective dose equivalent (TEDE) applicable to unrestricted release, without any adverse impact on public health and safety. Thus, DG-4014 should be clarified to ensure that the term "significant residual radioactivity" is not interpreted to imply that the alternatives provided in the license termination rule are in any way unsafe. Further, without such clarification, use of the term "significant residual radioactivity" could cause confusion, given that the NRC's dose limit for individual members of the public is a TEDE of 100 mrem/year.³⁰
- **Recordkeeping requirements applicable to survey results should be clarified.** The DPR requires that "records from surveys describing the location and amount of subsurface residual radioactivity identified at the site must be kept with records important to decommissioning, and such records must be retained in accordance with §§ 30.35(g), 40.36(f), 50.75(g), 70.25(g), or 72.30(d), as applicable."³¹ The supplemental information published with the final rule states:

Under the requirements of §§ 30.35(g), 40.36(f), 50.75(g), 70.25(g), and 72.30(d), licensees must designate the records from 10 CFR 20.1501(b) surveys of subsurface residual radioactivity at the site as records important for decommissioning. Significant residual radioactivity that must be documented in these records would include onsite subsurface residual radioactivity that would later require remediation during decommissioning to meet the unrestricted use criteria of 10 CFR 20.1402 (73 FR 3815; January 22, 2008). . . . Contamination survey results must be included in these records if the surveys are considered important for decommissioning planning.³²

³⁰ 10 C.F.R. § 20.1301.

³¹ 76 Fed. Reg. 35,564 (revised § 20.1501(b))(emphasis added).

³² Id. at 35,520-21 (emphasis added).

Thus, based on the language in the DPR, it appears that the results of all surveys performed pursuant to 20.1501 must be designated as "important to decommissioning" and maintained pursuant to the regulations cited above. But DG-4014 offers slightly different guidance, stating:

[Power reactor] licensees should ensure that the results of all surveys conducted per existing monitoring and surveillance programs, including NEI 07-07, that identify significant residual radioactivity are recorded, or incorporated by reference, in records important to decommissioning as specified in 10 CFR 50.75(g).³³

Thus, it is unclear whether all survey results must be considered "important for decommissioning planning," or whether this requirement applies only to survey results that reveal "significant residual radioactivity." It is also unclear whether the DPR and DG-4014 require reactor licensees to review and include survey results collected prior to the effective date of the DPR (e.g., results of GPI surveys collected prior to December 17, 2012). NEI requests clarification on these issues.

- **Add reference to 10 C.F.R. § 50.82(a)(8)(iii) in the last box of Figure 1 on page 6.** DG-4014 states: "[n]uclear power plant licensees should include the effect of survey results in the decommissioning cost estimates required by 10 CFR 50.75(f)(3) and 10 CFR 50.82(a)(8)(iii)."³⁴ But the last box of Figure 1 on page 6 only references § 50.75(f)(3). A reference to § 50.82(a)(8)(iii) should be added to Figure 1.

V. Concluding Comments.

In closing, we request that the NRC staff hold a public workshop, prior to issuance of the final guide, to receive stakeholder feedback on the staff's proposed disposition of comments and related changes to the draft guide. Our rationale for requesting a meeting prior to finalizing the guide includes the following:

- Our comments (and those of some other stakeholders) suggest substantive changes and additions to the draft regulatory guide, for example, providing detailed guidance for non-reactor licensees, properly integrating the full set of decommissioning options permitted in Subpart E to 10 C.F.R. Part 20, defining important terms, and further explaining the use of "available sources." Additional stakeholder feedback on these and other areas, as well as any substantive changes to the draft guide, will help enhance the clarity and completeness of the final guide, and facilitate successful implementation of the DPR.

³³ DG-4014, at pg. 12 (emphasis added).

³⁴ DG-4014, at pg. 9.

Ms. Cindy K. Bladey
February 10, 2012
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- DG-4014 provides initial guidance on implementing a significant rule change, particularly for non-reactor licensees and the NRC regional staff that will be responsible for compliance inspections in this area. Holding a public workshop prior to finalizing the guide affords the opportunity to receive input from the full range of stakeholders in an interactive context and make adjustments to text in the final guide that will better support both consistent implementation by licensees and consistent oversight by NRC.
- SRM-SECY-09-0042 called for such a workshop: "The staff should expeditiously republish the draft guidance related to surveys, subsurface contamination, and minimization of contamination for public comment and should hold a public workshop to explain it and answer questions." Holding the workshop would conform to the Commission's direction.

The final DPR established an 18-month implementation period. Nearly half of that implementation period has already passed and even more of the implementation period will necessarily run before the final guide is issued. The fact that final guidance in this area will not be available until very late in the implementation period will significantly challenge licensees, especially non-reactor licensees, to be in full compliance with the DPR by the current effective date of December 17, 2012. This situation will impose an unnecessary burden on licensees without any discernible health and safety benefit. Therefore, we request that the agency extend the effective date for the DPR to 18 months following issuance of the final guide. If you have any questions regarding our comments, please contact me at 202.739.8111; rla@nei.org.

Sincerely,



Ralph L. Andersen

Sexton, Kimberly

From: PETERSON, Scott [jsp@nei.org]
Sent: Wednesday, October 10, 2012 4:25 PM
To: Sexton, Kimberly
Subject: Re: EIPF Communications Follow-Up

If I could recommend commitment of NRC resources at the commissioner level it would be for engagement with leadership of the National Association of Regulatory Utility Commissioners at its annual meeting in the summer or fall meeting, usually in Washington, DC. This will give commissioners a regulator-to-regulator relationship with the leadership of Naruc either in a large group setting or within the electricity committee or nuclear issues subcommittee.

Be glad to discuss in greater detail if you wish.

Scott

Sent from my iPhone

On Oct 10, 2012, at 11:32 AM, "Sexton, Kimberly" <Kimberly.Sexton@nrc.gov> wrote:

Scott,

It was great to see you yesterday morning at the EIPF. The Commissioner asked me to follow-up with you regarding the Q&A portion of his keynote. I was surprised at the tone and angle of two of the questions, one from the Rhode Island Commissioner (Paul Roberti) and the other from the individual who was sitting between you and the Commissioner (I think it was a New Mexico Commissioner). Both seemed to be very skeptical of the safety and reliability of nuclear power, and we both believed that there was nothing we could have said or done to change or mollify those concerns.

We actually had a chance to chat with Paul in the Jacksonville airport for a bit yesterday and it seemed that although he had faith in the Commissioners and in our staff, he did not have that same level of trust in nuclear technology (especially w/r/t aging management and seismic issues). He appeared to feel somewhat better about the state of nuclear power in our country after his talk with the Commissioner, but, as you know, you can't have one-on-one conversations with every individual.

The Commission has never really focused any of its communications strategies on the state legislative or state regulatory level. But, the back-and-forth of yesterday morning made us wonder if there is more that we can and should do. Do you have any thoughts on this or feedback for the Commissioner? We would appreciate any insights that you might have into this.

Thank you,

Kimberly A. Sexton
Legal Counsel

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Sent through mail.messaging.microsoft.com

Herr, Linda

Outside of Scope

From: MANTSCH, Scott [<mailto:rsm@nei.org>]

Sent: Tuesday, November 06, 2012 2:04 PM

To: Herr, Linda

Subject: RE: request for time - mtg w/Cmr. Ostendorff

They are coming by car, but the driver of the car will just drop them off and go somewhere else for another meeting.

I have noted their calendars to look for Ms. Sargent in the lobby of One White Flint North.

Thanks again.

Herr, Linda

From: MANTSCH, Scott [rsm@nei.org]
Sent: Tuesday, November 06, 2012 12:26 PM
To: Herr, Linda
Subject: RE: request for time - mtg w/Cmr. Ostendorff

Sounds good. I will let you know whether they're driving or taking the Metro.

Thanks so much.

From: Herr, Linda [mailto:Linda.Herr@nrc.gov]
Sent: Tuesday, November 06, 2012 12:16 PM
To: MANTSCH, Scott
Cc: Kock, Andrea
Subject: RE: request for time - mtg w/Cmr. Ostendorff
Importance: High

Scott:

Go it, I have your folks scheduled for Dec. 12th from 2:00-2:30pm in Cmr. Ostendorff's office (0-18 G1).

This is a secure complex whether entering via garage or lobby I'll need the following info: arriving by car, please provide the make, model, color, tag number and state, and driver name (if appropriate). Ms. Kim Sargent, Protocol Director will reserve a parking space and meet Mr. Redmond and Mr. Myers in the garage to escort them to Cmr. Ostendorff's office. If coming by Metro (we are directly across the street from the White Flint Metro stop), Ms. Sargent will meet them at the OWFN Lobby level to escort them.

Regards,
Linda
301-415-1759

From: MANTSCH, Scott [mailto:rsm@nei.org]
Sent: Tuesday, November 06, 2012 12:02 PM
To: Herr, Linda
Cc: Kock, Andrea
Subject: RE: request for time - mtg w/Cmr. Ostendorff

Good morning.

This is great – how about Wednesday, December 12, at 2:00 pm?

Thanks much for writing.

Scott M.
202-739-8141
rsm@nei.org

From: Herr, Linda [<mailto:Linda.Herr@nrc.gov>]
Sent: Tuesday, November 06, 2012 11:52 AM
To: MANTSCH, Scott
Cc: Kock, Andrea
Subject: RE: request for time - mtg w/Cmr. Ostendorff
Importance: High

Good Morning Scott:

Cmr. Ostendorff would be available at the following times:

Dec 7: 10:00-10:30 or 10:30-11:00am;
Dec 12: between 2:00-4:00pm in ½ increments;
Dec 13: 3:00-3:30 or 3:30-4:00pm;
Dec 14: 9:30-10:00 or 10:00-10:30am

Please let me know if any of these dates/times work. For questions, feel free to call me directly at the number listed below.

Linda
301-415-1759

From: MANTSCH, Scott [<mailto:rsm@nei.org>]
Sent: Monday, November 05, 2012 8:43 AM
To: Herr, Linda
Subject: request for time

Good morning.

I work for Richard Myers and Everett Redmond at NEI. Your colleague, Andrea Kock, advised us to contact you to request time for them on the Commissioner's calendar sometime after December 1.

My two people are available to visit your offices any time on December 7, 11, 12, 13, or 14.

Thank you for your consideration.

Scott Mantsch
Policy Development, Planning & Supplier Programs Division

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www.nei.org

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F: 202-785-1498
E: rsm@nei.org

Begin forwarded message:

From: "Kock, Andrea" <Andrea.Kock@nrc.gov>
Date: October 26, 2012, 12:44:10 PM EDT
To: "REDMOND, Everett" <elr@nei.org>
Cc: "Herr, Linda" <Linda.Herr@nrc.gov>
Subject: RE: ECOS resolution and NEI testimony

Hi Everett: Thanks so much for the background information. The Commissioner would like more information about the Nuclear Fuel Supply Conference. I found the web site with the purpose of the conference, but wondered if you could send an agenda with potential speakers and if you could provide some information on the number of attendees expected. Even though he is scheduled to be coming back from WIPP on January 30, he still wants to consider your invitation.

We also discussed the possibility of you providing a status of ongoing activities and discussions regarding spent fuel. He would like to arrange for such a meeting after December 1. I would appreciate it if you could work directly with the Commissioner's Administrative Assistant, Linda Herr, to set up a time.

Thanks!

Andrea Kock
United States Nuclear Regulatory Commission
Policy Advisor for Materials
Office of Commissioner Ostendorff
301-415-2896

From: REDMOND, Everett [<mailto:elr@nei.org>]
Sent: Thursday, October 25, 2012 1:35 PM
To: Kock, Andrea
Subject: ECOS resolution and NEI testimony

Andrea

It was a pleasure to speak with you this morning. As we discussed, please find attached the resolution from ECOS (Environmental Council of the States) concerning used fuel disposition. Also attached is the NEI testimony that was provided to the Senate Energy and Natural Resources Committee on the Nuclear Waste Administration Act of 2012 introduced by Senator Bingaman a couple of months ago.

I would be happy to further discuss activities in this area with you in the near future.
Sincerely
Everett

Everett Redmond II, Ph.D.
Senior Director
Nonproliferation and Fuel Cycle Policy

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Herr, Linda

Outside of Scope

From: NEI Governmental Affairs[SMTP:NEIGA@NEI.ORG]
Sent: Thursday, November 15, 2012 3:44:35 PM
To: CMROSTENDORFF Resource
Subject: Invitation to the NEI Congressional Holiday Charity Reception
Auto forwarded by a Rule



**The Nuclear Energy Institute cordially invites you to its annual
Congressional Holiday Charity Reception**

Wednesday, December 12, 2012
Charlie Palmer Steak - 101 Constitution Avenue NW

5:30 - 8:30 p.m.

Please bring a new, unwrapped toy appropriate
for a child aged one to 17 for the Toys for Tots campaign.

Click here to RSVP

Click [here](#) to unsubscribe

Frazier, Alan

From: Vietti-Cook, Annette
Sent: Friday, November 16, 2012 12:00 PM
To: Lewis, Antoinette; Baval, Rochelle
Cc: Niedzielski-Eichner, Phillip; Zimmerman, Jacob; Astwood, Heather; Waters, Michael; Sharkey, Jeffry; Frazier, Alan; Sosa, Belkys; Baggett, Steven; Bubar, Patrice; Tadesse, Rebecca; Tappert, John; Kock, Andrea
Subject: FW: Industry Position on the Appropriateness of Integrated Safety Analyses at Fuel Facilities Licensed under 10 CFR Parts 40 and 70
Attachments: 11-16-12_Industry Position on the Appropriateness of ISA at Fuel Facilities.pdf

To Chairman and Commissioners for information copy to RF, add copy to record for October 23, 2012 Commission meeting.

Note SECY 12-0071 Final Rule: Domestic Licening of Source Material – Amendments/Integrated Safety Analysis is before the Commission for voting.

From: SCHLUETER, Janet [<mailto:jrs@nei.org>]
Sent: Friday, November 16, 2012 10:31 AM
To: Haney, Catherine; Weber, Michael; Kinneman, John; Gody, Tony; Moore, Scott; Bailey, Marissa
Subject: Industry Position on the Appropriateness of Integrated Safety Analyses at Fuel Facilities Licensed under 10 CFR Parts 40 and 70

NRC –

The attached letter was just sent electronically to the Chairman, Commissioners and EDO. It is relevant to SECY-2012-0071 before the Commission. Thank you for your attention to this important matter.

Janet R. Schlueter
Director, Fuel and Materials Safety
NEI
1776 I Street, N.W. Suite 400
Washington, D.C. 20006
p. 202-739-8098
f. 202-533-0132
b. (b)(6)

From: PIETRANGELO, Tony
Sent: Friday, November 16, 2012 10:18 AM
Subject: Industry Position on the Appropriateness of Integrated Safety Analyses at Fuel Facilities Licensed under 10 CFR Parts 40 and 70

November 16, 2012

The Honorable Allison M. Macfarlane
Chairman
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

Subject: Industry Position on the Appropriateness of Integrated Safety Analyses at Fuel Facilities Licensed under 10 CFR Parts 40 and 70 (Re: SECY-12-0071 before the Commission)

Project Number: 689

Dear Chairman Macfarlane:

The Nuclear Energy Institute (NEI)⁽¹⁾ provides the following comments in support of Integrated Safety Analyses (ISA) at fuel cycle facilities regulated by the U.S. Nuclear Regulatory Commission (NRC). We firmly support our mutual goal of continued safe and secure operations exemplified by our long-standing safety record. We trust this information is useful as you consider SECY-12-0071 where the staff recommends Part 40 be modified to require an ISA. This information also supplements the brief ISA discussion during the October 23, 2012 Commission briefing by staff on NRC's Fuel Facilities Business Line.

Industry continues to support the use of ISAs and does not support the conduct of Probabilistic Risk Assessments (PRA) at NRC-regulated fuel facilities for the reasons stated below. These positions are consistent with those provided to staff and NRC's Advisory Committee on Reactor Safeguards.

Anthony R. Pietrangelo
Senior Vice President and Chief Nuclear Officer

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Anthony R. Pietrangelo
SENIOR VICE PRESIDENT AND
CHIEF NUCLEAR OFFICER

November 16, 2012

The Honorable Allison M. Macfarlane
Chairman
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

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Industry continues to support the use of ISAs and does not support the conduct of Probabilistic Risk Assessments (PRA) at NRC-regulated fuel facilities for the reasons stated below. These positions are consistent with those provided to staff and NRC's Advisory Committee on Reactor Safeguards.

- **Imposing a PRA on Part 40 fuel facilities in any manner undermines the carefully constructed and ISA-informed regulatory framework in Part 70 today.** It would also cause unnecessary confusion for Part 70 licensees subject to proposed Part 40, particularly in the absence of a clearly articulated safety concern with current ISAs.

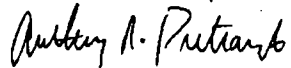
¹ NEI is the organization responsible for establishing unified nuclear industry policy on matters affecting the nuclear energy industry, including the regulatory aspects of generic operational and technical issues. NEI's members include all utilities licensed to operate commercial nuclear power plants in the United States, nuclear plant designers, major architect/engineering firms, fuel fabrication facilities, materials licensees, and other organizations and individuals involved in the nuclear energy industry.

- **Databases needed to develop a PRA for fuel facilities do not exist and would be costly and difficult if not impossible to develop.** There would likely be no statistically significant event or operational data on which to base a PRA. Further, conducting a PRA would require a different cadre of technical resources not currently in place at or readily available to fuel facilities.
- **A decision to use PRAs in any phase of fuel facility safety management must be based on a transparent cost benefit analysis that articulates and justifies anticipated safety improvements.** It is also questionable whether additional safety benefit would be realized from a PRA due to the lack of inter-dependent systems characteristic of fuel facilities and other inherent differences from power reactors.
- **Limited industry - and we suspect NRC - resources would be more effectively utilized by focusing on current higher priority NRC regulatory initiatives and other higher-valued safety work unique to each facility.** The regulatory initiatives include but are not limited to: 1) implementing revised Part 40 which applies to Part 70 facilities; 2) addressing unresolved items resulting from NRC inspections (post-Fukushima Temporary Instruction); 3) implementing cyber security requirements; 4) providing input on proposed Part 74 material control and accounting requirements; 5) providing input on the Part 21 draft regulatory basis for new or revised requirements and expectations such as commercial grade dedication; and 6) providing input to enhance NRC's Fuel Cycle Oversight Process.
- **The complex issue of applying ISAs versus PRAs at fuel facilities was carefully considered and extensively discussed between NRC and industry for over ten years during the 1990s.** As a result, Part 70 was modified in 2000 requiring fuel facilities to conduct an ISA that demonstrates compliance. Industry fully supported the Commission's decision on this matter and has implemented facility-specific ISAs.
- **NRC and industry have expended a significant amount of resources to ensure compliance and safety.** Each licensee spent four to five years with many diversified technical resources to conduct the ISA specific to their facility, and the NRC staff spent one to four years reviewing each one.
- **Finally, ISAs are "living documents" with feedback loops to identify and correct deficiencies based on operating experience, lessons-learned and best practices.** The required annual ISA updates to NRC help ensure they are maintained as living assessments. As a result, industry and NRC continue to develop and share insightful uses for the ISA information in oversight, operations, and design. We firmly believe that this ISA continuous improvement process should further mature as originally envisioned.

The Honorable Allison M. Macfarlane
November 16, 2012
Page 3

We look forward to Commission direction on this important matter. If you need additional information, please feel free to contact me or Janet Schlueter at 202-739-8098; jrs@nei.org.

Sincerely,



Anthony R. Pietrangelo

c: The Honorable Kristine L. Svinicki, Commissioner, NRC
The Honorable George Apostolakis, Commissioner, NRC
The Honorable Commissioner William D. Magwood, IV, Commissioner, NRC
The Honorable Commissioner William C. Ostendorff, Commissioner, NRC
Mr. R. William Borchardt, Executive Director for Operations, NRC

Castleman, Patrick

From: Castleman, Patrick
Sent: Friday, November 16, 2012 11:09 AM
To: 'BONANNO, Jerry'
Subject: RE: Comments on Revision 15 of NUREG-1307, "Report on Waste Burial Charges: Changes in Decommissioning Waste Disposal Costs at Low-Level Waste Burial Facilities" (Docket ID: NRC-2010-0362)

Thanks, that's good to know.

From: BONANNO, Jerry [mailto:jxb@nei.org]
Sent: Friday, November 16, 2012 11:04 AM
To: Castleman, Patrick
Subject: RE: Comments on Revision 15 of NUREG-1307, "Report on Waste Burial Charges: Changes in Decommissioning Waste Disposal Costs at Low-Level Waste Burial Facilities" (Docket ID: NRC-2010-0362)

No problem.

Just FYI, I have seen letters supporting our comments from Exelon, Duke, PSEG Nuclear, Dominion, and TVA. I believe NextEra (FP&L) and Entergy have also submitted comments, but haven't seen those letters yet.

EnergySolutions also submitted comments consistent with NEI's.

From: Castleman, Patrick [mailto:Patrick.Castleman@nrc.gov]
Sent: Friday, November 16, 2012 11:00 AM
To: BONANNO, Jerry
Subject: RE: Comments on Revision 15 of NUREG-1307, "Report on Waste Burial Charges: Changes in Decommissioning Waste Disposal Costs at Low-Level Waste Burial Facilities" (Docket ID: NRC-2010-0362)

Thanks, Jerry.

From: BONANNO, Jerry [mailto:jxb@nei.org]
Sent: Friday, November 16, 2012 10:59 AM
To: Castleman, Patrick
Subject: FW: Comments on Revision 15 of NUREG-1307, "Report on Waste Burial Charges: Changes in Decommissioning Waste Disposal Costs at Low-Level Waste Burial Facilities" (Docket ID: NRC-2010-0362)

Pat -

Attached please find our comment letter on NUREG-1307.

Jerry

From: ANDERSEN, Ralph
Sent: Thursday, November 15, 2012 12:37 PM
Subject: Comments on Revision 15 of NUREG-1307, "Report on Waste Burial Charges: Changes in Decommissioning Waste Disposal Costs at Low-Level Waste Burial Facilities" (Docket ID: NRC-2010-0362)

November 15, 2012

Ms. Cindy K. Bladey
Chief, Rules, Announcements, and Directives Branch
Office of Administration
Mail Stop: TWB-05-B01M
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

Subject: Comments on Revision 15 of NUREG-1307, "Report on Waste Burial Charges: Changes in Decommissioning Waste Disposal Costs at Low-Level Waste Burial Facilities" (Docket ID: NRC-2010-0362)

Project Number: 689

Dear Ms. Bladey:

This letter provides the comments of the Nuclear Energy Institute (NEI) on Revision 15 to NUREG-1307, which is intended for use by licensees to estimate low-level radioactive waste (LLRW) disposal costs associated with nuclear power reactor decommissioning. Revision 15 was noticed for a 30-day public comment period on Sept. 21, 2012. In a letter dated Sept. 26, 2012, NEI requested that the public comment period be extended to 90 days. The NRC granted NEI's request in part, extending the public comment period to 55 days.

NEI's detailed comments on Revision 15 are included in Attachments 1, 2 and 3 to this letter. Attachments 4 and 5 include copies of industry and NRC staff presentations from the Nov. 7, 2012, public meeting that is referenced in our detailed comments. As explained in the attachments, NEI has serious concerns regarding both the substance of Revision 15 and, more generally, the process used to develop and incorporate changes to NUREG-1307. First, the proposed changes to the vendor disposal option contained in Revision 15 are based on the incorrect assumption that large volumes of Class A LLRW—which are clearly destined for the disposal facility in Clive, Utah—will instead be disposed of at a facility priced like the Barnwell facility in South Carolina. The examples provided in Revision 15 reveal that this unsupported and incorrect assumption would significantly increase the NRC's minimum formula amount applicable to reactor licensees.

Further, this significant change to NUREG-1307 was undertaken with a minimal process for obtaining formal input from industry or other stakeholders. Revision 15 was originally published for only a 30-day comment period, although the NRC did extend that period to 55 days at NEI's request. Despite the fact that the NRC is now in the process of revising NUREG-1307 for the fifteenth time, this is the first time that public comment has been solicited on the document. Further, no Regulatory Analysis was performed prior to issuing Revision 15. Given the potential financial impact of the changes contained in Revision 15, the lack of any Regulatory Analysis is particularly striking. If finalized in its current form and used by reactor licensees to update decommissioning minimums (consistent with past practice), the financial impact on the nuclear power industry would be substantial. Such impact is unsupported and unjustified by the data contained in the current revision of NUREG-1307.

Given the substantive and procedural deficiencies described above, we urge the NRC to not adopt this revision and instead to continue to rely on Revision 14 of the document until an adequately transparent process is developed and implemented to update the NUREG. In the event that the NRC decides to

finalize Revision 15 by Dec. 31, 2012, NEI supports the use of a 95%/5% ratio based on LLRW classification categories as a replacement for what has traditionally been known as the "Vendor Disposal Option." This latter option is described in more detail in Attachment 3.

NEI's detailed comments are provided in the five attachments to this letter:

- Attachment 1: Introduction and Background
- Attachment 2: Administrative Processes Used to Issue and Revise NUREG-1307 Have Been Insufficient to Establish It Either as a Rule or as Formal Guidance
- Attachment 3: Changes to the Vendor Disposal Option in Revision 15 are Arbitrary and Capricious
- Attachment 4: "Nuclear Industry Views on Table A-4 of Proposed Revision 15 to NUREG-1307," PowerPoint Presentation, Nov. 7, 2012
- Attachment 5: "NUREG-1307, Rev. 15, Update," PowerPoint Presentation, Nov. 7, 2012

If you have any questions concerning these comments please feel free to contact me or Jerry Bonanno (jxb@nei.org, 202-739-8147).

Sincerely,

Ralph L. Andersen, CHP
Senior Director, Radiation Safety & Environmental Protection

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Ralph L. Andersen, CHP
SENIOR DIRECTOR
RADIATION SAFETY & ENVIRONMENT PROTECTION
NUCLEAR GENERATION DIVISION

November 15, 2012

Ms. Cindy K. Bladey
Chief, Rules, Announcements, and Directives Branch
Office of Administration
Mail Stop: TWB-05-B01M
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

Subject: Comments on Revision 15 of NUREG-1307, "Report on Waste Burial Charges: Changes in Decommissioning Waste Disposal Costs at Low-Level Waste Burial Facilities" (Docket ID: NRC-2010-0362)

Project Number: 689

Dear Ms. Bladey:

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¹ NEI is the organization responsible for establishing unified nuclear industry policy on matters affecting the nuclear energy industry, including the regulatory aspects of generic operational and technical issues. NEI's members include all utilities licensed to operate commercial nuclear power plants in the United States, nuclear plant designers, major architect/engineering firms, fuel fabrication facilities, nuclear material licensees, and other organizations and individuals involved in the nuclear energy industry.

² 77 Fed. Reg. 58,591 (Sept. 21, 2012).

³ Letter from R. Andersen (NEI) to C. Bladey (NRC), "Request for Extension of the Public Comment Period on Revision 15 of NUREG-1307, 'Report on Waste Burial Charges: Changes in Decommissioning Waste Disposal Costs at Low-Level Waste Burial Facilities,' Sept. 26, 2012, (Docket ID: NRC-2010-0362)."

⁴ 77 Fed. Reg. 64,361 (Oct. 19, 2012).

Ms. Cindy K. Bladley
November 15, 2012
Page 2

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Given the substantive and procedural deficiencies described above, we urge the NRC to not adopt this revision and instead to continue to rely on Revision 14 of the document until an adequately transparent process is developed and implemented to update the NUREG.⁶ In the event that the NRC decides to finalize Revision 15 by Dec. 31, 2012, NEI supports the use of a 95%/5% ratio based on LLRW classification categories as a replacement for what has traditionally been known as the "Vendor Disposal Option." This latter option is described in more detail in Attachment 3.

NEI's detailed comments are provided in the five attachments to this letter:

- Attachment 1: Introduction and Background

⁵ The NRC's minimum formula amount (10 C.F.R. § 50.75(c)) is used as one step in the overall regulatory process in providing decommissioning funding assurance. It is not intended to be a "substitution for...other requirements...and [is] not intended to be used by [itself] or by other agencies to establish rates." 10 C.F.R. § 50.75(a).

⁶ Although we believe that reliance on Revision 14 is a preferable short-term alternative to the changes proposed in Draft Revision 15, this should not be interpreted as a wholesale endorsement of Revision 14. As explained above, this is the first time comments have been solicited on NUREG-1307. Industry was appropriately focused on Revision 15 during the 55 day comment period provided. We qualify our statements regarding Revision 14 because – as explained in Enclosure 3 – we believe that a 95%/5% ratio, which tracks with waste classification, is appropriate. Revision 14 utilized an 85%/15% ratio, and the basis for such a ratio is unclear.

Ms. Cindy K. Bladey
November 15, 2012
Page 3

- Attachment 2: Administrative Processes Used to Issue and Revise NUREG-1307 Have Been Insufficient to Establish It Either as a Rule or as Formal Guidance
- Attachment 3: Changes to the Vendor Disposal Option in Revision 15 are Arbitrary and Capricious
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- Attachment 5: "NUREG-1307, Rev. 15, Update," PowerPoint Presentation, Nov. 7, 2012

If you have any questions concerning these comments please feel free to contact me or Jerry Bonanno (jxb@nei.org, 202-739-8147).

Sincerely,



Ralph L. Andersen

Attachments

c: Mr. Ho K. Nieh Jr., NRR/DIRS, NRC
Mr. Thomas L. Fredrichs, NRR/DIRS, NRC
Mr. Richard H. Turtill, NRR/DIRS/IFAIB, NRC
Ms. Jo Ann Simpson, NRR/DIRS/IFAIB, NRC
Ms. Anneliese Simmons, NRR/DIRS/IFAIB, NRC

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NEI Comments on Revision 15, NUREG-1307

INTRODUCTION AND BACKGROUND

I. NUREG-1307 and Decommissioning Funding

10 C.F.R. § 50.75 establishes requirements dictating how NRC licensees are to provide reasonable assurance that funds will be available for the decommissioning process.¹ More specifically, power reactor licensees must provide assurance of decommissioning funding in an amount at least equal to the amount yielded by application of the table and formulas in § 50.75(c)(1).² The tables and formulas in § 50.75(c)(1) provide the minimum amounts required to demonstrate reasonable assurance of funds for decommissioning, by reactor type and power level, in 1986 dollars. Because the minimum amount is provided in 1986 dollars, it must be adjusted annually to account for escalating labor, energy, and low-level radioactive waste (LLRW) burial costs.³ The NRC's regulations go on to state that the escalation factor for LLRW burial (B_x) "is to be taken from NRC report NUREG-1307, 'Report on Waste Burial Charges.'"⁴

¹ Providing decommissioning funding assurance is a multi-step effort, which is implemented over the operating life of a plant and continues after plant shutdown. The elements of this multi-step effort include not only the use of the certification formula amount to determine initial decommissioning levels, but also: annual updating of that formula amount; biennial reporting on the status of decommissioning funds; adjustment of funding levels, as necessary; limiting funding assurance mechanisms to those considered appropriate by the NRC; limiting assumptions regarding estimated future growth of funds to a conservative rate of return; submittal of a preliminary decommissioning cost estimate five years prior to shut down; submittal of a site-specific cost estimate within two years of plant shutdown; and prohibiting the use of decommissioning funds for any purpose other than decommissioning. *See* 10 C.F.R. §§ 50.75, 50.82. *See also*, Letter from Hon. A. M. Macfarlane (Chairman, NRC) to Hon. B. Boxer (Chairman, Committee on Environment and Public Works, U.S. Senate), July 11, 2012, at pg. 2. ("The decommissioning funding formula is only one input to the NRC's regulatory system for funding assurance, which includes annual adjustments and accounting for site-specific costs. When these steps are considered as a whole, they provide reasonable assurance that funds will be available when needed.")

² 10 C.F.R. § 50.75(b)(1). This is often referred to as the "minimum formula amount." As the NRC made clear in response to a recent GAO report, the formulas in 10 C.F.R. § 50.75(c) are designed to ensure that the "bulk" of decommissioning funds are set aside or accounted for relatively early in plant life. Specifically, with respect to the credibility and accuracy of the minimum funding formula the NRC stated:

The NRC formula is intended to provide a reference level decommissioning funding amount for use by licensees as a planning tool early in plant life. The formula amount is based on studies of the costs to decommission a reactor, but accuracy is difficult to achieve early in plant life due to the uncertainties of projecting costs decades into the future. In view of this, the NRC disagrees that the reevaluation of the formula should be the method to achieve the goals of credibility and accuracy. The NRC believes those goals should be achieved by requiring the licensee to provide an updated plant-specific cost estimate late in plant life, as found in Title 10 of the *Code of Federal Regulations* Section 50.75(f)(3). At that time, additional decommissioning information will be available to the licensee, which reduces uncertainties to a level that permits reasonable accuracy in cost projections.

Letter from Hon. A. M. Macfarlane (Chairman, NRC) to Hon. B. Boxer (Chairman, Committee on Environment and Public Works, U.S. Senate), July 11, 2012, at pg. 3.

³ 10 C.F.R. § 50.75(b)(2), (c)(2).

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Power reactor licensees are also required to file biennial reports describing the status of decommissioning funding for each reactor. At a minimum, these reports—which are due on March 31 of odd-numbered years—must include:

- The amount of decommissioning funds estimated to be required under 10 C.F.R. § 50.75(b) and (c);
- The amount accumulated to the end of the calendar year preceding the date of the report;
- A schedule of the annual amounts remaining to be collected;
- The assumptions used regarding rates of escalation in decommissioning costs, rates of earnings on decommissioning funds, and rates of other factors used in funding projections;
- Any contracts upon which the licensee is relying under § 50.75 (e)(1)(v);
- Any modifications occurring to a licensee's current method of providing financial assurance since the last submitted report; and
- Any material changes to trust agreements.⁵

Historically, the most recent revision of NUREG-1307 is used by licensees when preparing the biennial reports required by § 50.75. Thus, if a revision to NUREG-1307 is finalized by December 31 of an even numbered year, NRC's expectation is that a licensee would use that revision in preparing its biennial report due the following March. Draft Revision 15 to NUREG-1307 was published for a 30-day public comment period on September 21, 2012.⁶ Like recent revisions to the NUREG, Draft Revision 15 provides LLRW escalation factors for two scenarios: (1) "Direct Disposal" and (2) "Direct Disposal with Vendors" (*i.e.*, the vendor disposal option). The most significant and troubling changes in Revision 15 involve the vendor disposal option, the history of which is discussed in greater detail below in Section II. Section III provides a detailed procedural history of Revision 15. NEI's views on the process used to revise NUREG-1307 are provided in Attachment 2, and our substantive comments on the technical deficiencies and potential solutions are included in Attachment 3.

⁴ 10 C.F.R. § 50.75(c)(2).

⁵ 10 C.F.R. § 50.75(f).

⁶ 77 *Fed. Reg.* 58, 591 (Sept. 21, 2012).

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II. Origin and Evolution of the “Vendor Disposal Option”

An option taking account of the growing trend of disposal of LLRW through vendors was added to NUREG-1307 in 1998.⁷ Prior to 1998, LLRW burial costs were estimated using costs for direct disposal at one of the existing LLRW disposal facilities. Revision 8 of NUREG-1307 states:

This update includes the additional LLW disposition option of turning the majority of the LLW generated during decommissioning over to waste vendors for disposition... It is left to the licensees to determine whether direct disposal or disposition using waste vendors best represents their particular situation.⁸

As explained in Section A.3, “LLW Disposition by Waste Vendors,” of Revision 8, the addition of the vendor option was an attempt to make the cost estimates contained in NUREG-1307 more realistic by recognizing the growing trend among nuclear power licensees of outsourcing LLRW management functions to waste vendors for a negotiated fee (*e.g.*, \$/pound or \$/unit volume). The vendor would then determine the most efficient disposition option for each waste stream. Revision 8 specified that such disposition options could include survey and sorting (*i.e.*, clean vs. contaminated), recycling, volume reduction, and subsequent disposal of residual LLRW at the most cost-effective disposal site. Revision 8 also recognized that it was in the waste vendor’s business interest to effectively manage wastes to reduce the cost of ultimate disposal.⁹

The NRC priced the vendor option in Revision 8 by obtaining quotes for certain waste streams (*i.e.*, activated/contaminated concrete and contaminated metal) from waste vendors, utilizing a voluntary survey to obtain the information. In addition, the NRC made the following assumptions: (1) all dry active waste (DAW) would be contracted by waste vendors at the same price as activated/contaminated concrete, and (2) all liquid radioactive waste and activated metals would be disposed of without further processing—that is, these waste streams would be shipped directly to disposal facilities.¹⁰ So, the cost estimates for the vendor disposal option were derived using vendor pricing for the DAW and activated/contaminated concrete, and pricing for

⁷ NUREG-1307, Rev. 8, “Report on Waste Disposal Charges: Changes in Decommissioning Waste Disposal Costs at Low-Level Waste Burial Facilities” (December 1998) (“Rev. 8”).

⁸ Rev. 8, at pg. 2.

⁹ See Rev. 8, at pg. A.2.

¹⁰ Rev. 8, at pg. A.3.

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direct disposal at facilities in South Carolina and Washington for liquid radioactive wastes and activated metals.¹¹

Although the waste vendor disposal option resulted in lower B_x values, the NRC concluded that inclusion of the option was conservative because: (1) “the waste vendor prices used [were] at the upper range of the price quotes provided,” (2) “the waste vendor quotes included packaging and transportation of LLRW, which are already included in the labor and energy cost elements, respectively, of the 10 C.F.R. § 50.75 algorithm,” and (3) “when utilization of waste vendors is more cost effective than direct disposal . . . at least some of the activated metal could be dispositioned more economically through the services of a vendor.”¹²

Apart from adjustments to actual pricing information, it appears that the basic methodology used to estimate the costs associated with the vendor disposal option remained unchanged for over a decade, until issuance of Revision 14 of NUREG-1307 in 2010.¹³

Revision 14 to NUREG-1307 was published in November 2010. In Revision 14, the pricing inputs for estimating the cost of LLRW disposal under the vendor disposal option changed. Instead of utilizing pricing provided by waste vendors, Revision 14 utilizes pricing for disposal of several categories of Class A LLRW at the Clive, Utah facility (e.g., large components, debris, oversized debris, resins/filters, combustibles, evaporator bottoms).¹⁴ Also, Revision 14 states that the pricing information provided for disposal at the Clive facility was applied to 100% of the Class A LLRW volumes.¹⁵ In contrast, as described above, in previous revisions of NUREG-

¹¹ See Rev. 8, at Table B.19 and B.20.

¹² *Id.* at pg. A-3.

¹³ See, e.g., NUREG-1307, Rev. 13, “Report on Waste Disposal Charges: Changes in Decommissioning Waste Disposal Costs at Low-Level Waste Burial Facilities” (November 2008)(“Rev. 13”). In Rev. 13, the NRC estimated the cost of the vendor disposal option by utilizing price quotes from three waste vendors for activated/contaminated concrete and contaminated metal. Further, like Rev. 8, the cost analysis in Rev. 13 assumed that disposition of DAW was contracted by waste vendors at the same price as activated/contaminated concrete, and that all liquid radioactive waste and activated metals were disposed of via direct shipment to one of the two existing waste disposal facilities (i.e., South Carolina or Washington). *Id.* at pg. A-3, Tables B.33 – B.64.

¹⁴ NUREG-1307, Rev. 14, “Report on Waste Disposal Charges: Changes in Decommissioning Waste Disposal Costs at Low-Level Waste Burial Facilities” (November 2010)(“Rev. 14”), at pg. A.3.

¹⁵ “In support of NUREG-1307, Rev. 14, price quotes to dispose of each of the components of the reference PWR and BWR were obtained for disposal of Class A LLW at the Clive, Utah disposal facility. Unit costs, exclusive of taxes, were provided for several different categories of components, which are listed in Table A.3. These rates assume no volume discounts, which can be substantial. In addition, a tax of 10% was assumed. The rates in Table A.3 were applied to 100% of the Class A LLW volumes.” Rev. 14, at pg. A.3.

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1307 the pricing information provided by LLRW vendors was applied to certain waste streams (e.g., DAW, activated/contaminated concrete), while other waste streams were assumed to be shipped directly to disposal facilities in South Carolina or Washington.¹⁶ Revision 14 also states that “[e]ffective with NUREG-1307, Rev. 14, this option [waste vendor] assumes that 85% of the total LLW volume is dispositioned using waste vendors and the Clive, Utah disposal facility and the remaining 15% is dispositioned via direct disposal at one of the two full-service disposal facilities.” It is unclear whether this represents a change or simply documentation of past practice. Whether it originated with Revision 8 or Revision 14, it is unclear how the 85%/15% assumption was derived and whether it is consistent with the statement that “the rates in Table A.3 were applied to 100% of the Class A LLW volumes.”¹⁷

Revision 14 also contained the following, somewhat cryptic, caution regarding future revisions to NUREG-1307:

[I]nformation received since the waste vendor option was introduced in 1998 suggests the percentage of waste that is actually processed by a waste vendor may be less than 100 percent. The NRC is considering adjusting the waste vendor option to reflect this additional information in the next revision of NUREG-1307, which could result in an increase in the cost estimate for the waste vendor disposal option. Accordingly, given these considerations, licensees may want to set aside additional decommissioning trust funds in order to avoid significant future shortfalls in funding and potential enforcement actions.¹⁸

While suggesting that licensees set aside additional decommissioning funds to “avoid significant future shortfalls” and “potential enforcement actions,” Revision 14 to NUREG-1307 provided no information on how much additional funding may be needed as a result of unspecified future changes to the NUREG; the nature of the information upon which the NRC was relying to

¹⁶ Although Revisions 8 – 13 are fairly clear in describing how the vendor and disposal facility pricing information was applied to certain waste streams, Revision 14 seems to assert that the B_x factors developed for the vendor option in Revision 8 “assumed that 100% of the Class A LLW was dispositioned using waste vendors.” Rev. 14, at pg. A.3. Revisions of the NUREG prior to Revision 14 did not, however, explicitly state or indicate that pricing was applied by waste classification. Instead, as described above, these revisions explained that pricing was applied based on the type of waste stream in question. For example, using comparisons of PWR data from the B series of tables, it appears that the waste vendor option affected 12 of 29 reference components for PWRs, which implies that the waste vendor option was only being applied to a subset of waste streams.

¹⁷ Rev. 14, at pg. A.3.

¹⁸ Rev. 14, at pg. iv.

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support such changes; or the magnitude of the changes to the vendor disposal option being contemplated. Further, prior to the publication of Revision 15, no iteration of NUREG-1307 was ever published for public comment. Suggesting that licensees set aside additional decommissioning funds under threat of enforcement action based on vague references to unspecified changes to a technical NUREG document that may (or may not) occur at some unspecified future date is utterly inconsistent with the Commission's Principles of Good Regulation. Additional detailed comments on the insufficiency of the process used to update NUREG-1307 are provided in Attachment 2.

III. Procedural History of Revision 15 to NUREG-1307

Apart from the vague foreshadowing in Revision 14 discussed above, the first specific information provided by the NRC on Revision 15 to NUREG-1307 came during a presentation at a March 2, 2011, workshop on decommissioning funding.¹⁹ During that presentation, the NRC advised the meeting participants that it was considering adjusting the vendor disposal option such that only 70% of the LLRW would be assumed to be disposed of through a vendor and 30% would be assumed to be shipped directly to a disposal facility (*i.e.*, in either South Carolina or Washington). The NRC also communicated that the change was based upon a review of licensee site-specific cost estimates and actual decommissioning experience, and that they believed this change would align the formula amount with the site-specific cost estimates provided by licensees. The potential impact on the required decommissioning funding minimums was described as between \$50,000,000 and \$70,000,000. Importantly, when asked whether public comment would be solicited on the proposed changes to NUREG-1307, the NRC staff stated that its intent was simply to provide stakeholders notice of the planned changes and the likely impacts on the decommissioning funding minimums, but that the document would not be vetted further prior to being finalized.²⁰

In a letter dated March 8, 2011, NEI communicated several concerns to the Commission regarding the conduct of the March 2, 2011 workshop. Notably, NEI expressed concern that changes to a document like NUREG-1307—which is explicitly referenced in 10 C.F.R. § 50.75 and can significantly affect the minimum amount required to provide reasonable assurance of

¹⁹ Powerpoint Presentation, "Overview of NUREG-1307, Revision 14, Report on Waste Burial Charges," presented by Clayton Pittiglio (NRC) and Steve Short (PNNL), March 2, 2011.

²⁰ See "Official Transcript of Proceedings: Decommissioning Funding Workshop," March 2, 2011 (NRC Work Order No. NRC-742), at pg. 77-78 ("Transcript"). Notably, at several points during the workshop, industry representatives requested the opportunity to interact with the NRC staff on issues related to LLRW disposal. See Transcript, at pgs. 41-42, 53-55, 56-57. No such interactions occurred until a November 7, 2012, public meeting, which was held at industry's request.

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adequate decommissioning funding—would not be published for public comment.²¹ In a Staff Requirements Memorandum dated February 27, 2012, the Commission directed the staff to publish Revision 15 to NUREG-1307 for public comment prior to finalizing the document.²²

Draft Revision 15 to NUREG-1307 was published for a 30-day public comment period on September 21, 2012.²³ The changes to the assumptions regarding the vendor disposal option were even more significant than those discussed in the March 2, 2011, public meeting. In fact, the changes proposed in Revision 15 increase the minimum formula amount by nearly double the amount predicted by the staff in the March 2, 2011 public meeting. Specifically, the examples provided in Revisions 14 and 15 reveal the following increases in the minimum formula amount as a result of changes to the B_x factor for the vendor disposal option:

Reactor Type	Thermal Power Rating	Disposal Option (vendor vs. direct)	Revision 14 Minimum Funding Estimate ²⁴	Revision 15 Minimum Funding Estimate (using Rev. 14 E and L factors and Rev. 15 B_x) ²⁵	Increase in Funding Estimate Due to Changes to B_x in Rev. 15
BWR	3,400 MWth	Vendor	\$612,000,000	\$746,589,150	\$134,589,150
PWR	3,400 MWth	Vendor	\$477,000,000	\$606,985,050	\$129,985,050

²¹ Letter from A.Pietrangelo (NEI) to Hon. G.Jaczko (NRC), "Concerns Regarding the Conduct of the U.S. Nuclear Regulatory Commission's March 2 Decommissioning Funding Workshop," March 8, 2011.

²² Staff Requirements – SECY-11-0133 – "Options to evaluate Requests to Use Discounted Parent Company Guarantees to Assure Funding of Decommissioning Costs for Power Reactors," Feb. 27, 2012.

²³ 77 Fed. Reg. 58, 591 (Sept. 21, 2012).

²⁴ Rev. 14, at pg. 8.

²⁵ See Draft Rev. 15, at pg. 10-11.

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In a letter dated September 26, 2012, NEI requested that the public comment period on Draft Revision 15 be extended from 30 to 90 days.²⁶ In that letter, NEI expressed concern that the waste burial escalation factor contained in Draft Revision 15 may have been based, in part, on a misinterpretation and misapplication of information contained in site-specific decommissioning funding estimates submitted by reactor licensees. Such errors, NEI explained, could result in the unwarranted imposition of significant additional decommissioning funding obligations on reactor licensees. NEI went on to argue that a 90-day public comment period would provide a more sufficient time period for industry stakeholders to fully evaluate the NRC's proposed changes, obtain necessary clarification from the agency, and offer comprehensive input on the assumptions and bases underlying the proposed revisions. Given the complexities involved in estimating decommissioning funding obligations, the significant financial impacts associated with the proposed changes, and the need to adequately understand the bases and assumptions that support Revision 15, NEI believed that a public comment period of 90 days was reasonable and more consistent with comment periods offered on other significant revisions to NRC guidance and proposed rulemakings.

In a letter dated October 5, 2012, the NRC agreed to extend the public comment period on Draft Revision 15 from 30 to 55 days, making written comments due on November 15, 2012.²⁷ In addition, the NRC's October 5, 2012, letter stated that "the NRC held a workshop on March 2, 2011, in Rockville, MD, to actively seek stakeholder input on power reactor decommissioning issues and to obtain comments on the waste vendor disposal option." NEI disagrees with this characterization of the March 2, 2011, public meeting. As discussed above, the NRC staff clearly communicated that the purpose of the March 2 presentation on the proposed revisions to NUREG-1307 was *not* to solicit public comment. Rather, the NRC staff stated that the purpose of the presentation was to provide notice to stakeholders that the document would be modified and that the modifications would result in a significant increase in the minimum amount required to demonstrate reasonable assurance of adequate decommissioning funding. The *Federal Register* notice published on September 21, 2012, provided the first opportunity for public comment on this or any of the previous 14 versions to NUREG-1307.

The NRC's October 5, 2012, letter extending the comment period from 30 to 55 days also explains that the NRC staff would greatly benefit from additional waste burial data, including:

²⁶ Letter from R.Andersen (NEI) to C.Bladey (NRC), "Request for Extension of the Public Comment Period on Revision 15 of NUREG-1307, 'Report on Waste Burial Charges: Changes in Decommissioning Waste Disposal Costs at Low-Level Waste Burial Facilities' (Docket ID: NRC-2010-0362)," Sept. 26, 2012.

²⁷ Letter from H.Nieh (NRC) to R.Andersen (NEI), October 5, 2012.

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- (1) Actual disposal costs including, but not limited to, waste management and disposal costs, under proprietary cover, if necessary;
- (2) Disposal costs specific to disposal operations for Rancho [Seco] and ZionSolutions, under proprietary cover, if necessary;
- (3) Identification of misinterpreted or misapplied data, if any, found in Table A-4 of NUREG-1307, Rev.15; and
- (4) Licensees' site-specific cost estimates and timing assumptions.²⁸

NEI's comments on the substance of Revision 15 to NUREG-1307 are primarily focused on identifying and explaining the problems associated with the information contained in Table A-4 and potential solutions to those problems, which would result in a B_x factor that more accurately reflects current LLRW burial costs. NEI believes that the problems associated with Table A-4 are the most significant and substantive deficiencies in Revision 15, and given the relatively short comment period provided, our comments appropriately focus on this area. NEI and the industry are, however, very interested in the development of an expanded, public process for revising and updating the LLRW cost estimates provided in NUREG-1307. As acknowledged in the NRC's October 5 letter, some information relevant to updating generic LLRW cost estimates may be commercially sensitive (*i.e.*, proprietary) and voluntary disclosure of such information to the agency will need to be carefully planned and well understood by those providing the information. For example, multiple interactions between the NRC staff and the relevant industry stakeholders will likely be necessary in order to come to agreement on the need for such information, how the information will be used, and how to properly scope the disclosures. Although NEI could assist in facilitating such voluntary disclosures by its member companies and others, ultimately, agreement to provide such information would need to be obtained from individual NEI member companies, as well as any other companies that have a commercial interest in the information (*e.g.*, companies providing waste disposal or processing services). Thus, much of the information mentioned in the NRC's October letter is not being provided with these comments.²⁹

²⁸ *Id.*, at pg. 2.

²⁹ We also note that based on the brief description provided in the NRC's October letter, NEI does not believe that it possesses such commercially sensitive information.

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I. NRC Licensees Are Not Required to Use Any Version of NUREG-1307 Because the Process Used to Revise NUREG-1307 Does Not Comply with the Administrative Procedure Act or the NRC's Own Procedures for Developing Agency Guidance.

As discussed below, no administrative process has been followed with respect to the issuance and application of NUREG-1307, including its revisions, that would confer the status of a rule, or even NRC guidance on the document. Despite a general citation to the document in the decommissioning regulations, neither the original version nor any of the subsequent revisions have been issued in a fashion that complies with the Administrative Procedure Act (APA) provisions governing the issuance of binding regulations, or NRC processes for imposing generic rules or guidance, which would be required to confer some official regulatory status on the document. As demonstrated below, these deficiencies lead to the conclusion that irrespective of licensees' prior application of the previous revisions of this document—for purposes of calculating the NRC formula amount for minimum decommissioning certification—the report is fundamentally no more than an advisory document.

A. Non-Conformance to the Administrative Procedure Act Rulemaking Provisions

1. Failure to Afford Notice and Comment on NUREG-1307 or Its Revisions

Although 10 C.F.R. § 50.75(c)(2) references NUREG-1307, no document or revision thereto has ever been issued in compliance with the APA's rulemaking requirements. In fact, a final version of NUREG-1307 did not exist prior to promulgation of the final rule.¹ NUREG-1307 itself states that the approaches and methods described in it are "not a substitute for NRC regulations" and "are provided for information only."² Thus, while the NRC's own statements appear to acknowledge that the document is not legally binding on licensees, the history of its application, beginning with its inclusion in the text of the decommissioning rule, suggest that the NRC may

¹ A draft NUREG appears to have been available when the final rule was issued. Regardless, substantive changes have since been made to the document over the course of the document's fifteen versions, therefore even if the first version were to somehow be viewed as part of the final rule, a new rulemaking would be required in order for the guidance contained in subsequent revisions to be legally binding. *Funeral Consumer Alliance, Inc. v. FTC*, 481 F. 3d 860 (D.C. Cir. 2007).

² See NUREG-1307, Draft. Rev. 15, at pg. ii.

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have assumed or intended alternative interpretations. Accordingly, we address the regulatory status of NUREG-1307 below, beginning with the failure to adhere to the APA and, thus, the absence of any basis on which to assert that the document is to be construed as a regulation, having the force and effect of law.

In order for an administrative rule to be legally binding, and treated as a “legislative rule,” it must be promulgated through the formal notice and comment rulemaking procedures contained in the APA.³ Such legislative rules have the force and effect of law, and grant rights, impose obligations, or produce other significant effects on private interests. Alternatively, non-legislative or “interpretive” rules (those intended to merely interpret a statute or another rule, and which do not create new duties, rights, or obligations) are not subject to notice and comment procedures under the APA.⁴ But, when agencies attempt to bind parties with interpretive rules, regulated entities and the public are deprived of the right to participate in the rulemaking process.⁵

Based on past practice, it is not apparent whether the NRC considers NUREG-1307 to be either a legislative or interpretive rule (whereby the NRC is merely interpreting its regulations and informing the public of its construction of a particular statutory provision or definition). If NUREG-1307 is, in fact, intended to serve as a requirement—*i.e.*, the NRC is seeking to use the document itself to change licensee *obligations*—then each substantive revision of the document effectively seeks to re-write the regulation, impose new duties on licensees, and would be subject to APA notice and comment requirements. Yet the NRC has not promulgated NUREG-1307 under the APA’s notice and comment procedures. Thus, NUREG-1307, including its revisions, lack the force and effect of law.

³ *Election Privacy Information Center v. U.S. Dept. of Homeland Sec.*, 653 F.3d 1 (D.C. Cir. 2011)(it is enough for the agency’s statement to “purport to bind” those subject to it, that is, to be cast in “mandatory language” so the “affected private parties are reasonably led to believe that failure to conform will bring adverse consequences.”).

⁴ NRC practice, however, is to provide an opportunity for notice and comment on proposed guidance documents.

⁵ Courts have criticized agency use of guidance documents in the form of interpretive rules and policy statements, recognizing the potential problem that “[l]aw is made, without notice and comment, without public participation, and without publication in the Federal Register or the Code of Federal Regulations.” *Appalachian Power Co. v. EPA*, 208 F.3d 1015, 1020 (D.C. Cir. 2000). Accordingly, agency “interpretations contained in policy statements, agency manuals, and enforcement guidelines, all of which lack the force of law—do not warrant *Chevron*-style deference.” *Christensen v. Harris County*, 529 U.S. 576, 587 (2000).

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2. Failure to Incorporate NUREG-1307 by Reference

A mechanism the NRC might have considered employing to confer regulatory status, potentially as a rule, on NUREG-1307, would have been to incorporate the document by reference in the decommissioning rulemaking, in accordance with the provisions of the APA allowing incorporation by reference.⁶ Incorporation by reference can serve as a means of adopting external documents as part of a rule.⁷ The mechanism provides for the adoption of material as having been published in the *Federal Register*, and thereby providing a means to satisfy other statutory and regulatory provisions requiring publication in the *Federal Register*, including the APA rulemaking provisions.⁸

Despite citing NUREG-1307 in 10 C.F.R. § 50.75(c)(2) when that provision was originally adopted, the Commission did not indicate in the original decommissioning funding rulemaking that it intended to incorporate NUREG-1307 by reference. Further, the Commission never followed additional provisions applicable to incorporation by reference, such as requesting approval by the Director of the Federal Register,⁹ or demonstrating that the material is appropriate for reference in accordance with certain standards.¹⁰ Thus, the language in 10 C.F.R. Part 50 regarding the use of NUREG-1307—*i.e.*, that the escalation factor for burial charges “is to be taken” from NUREG-1307—cannot be interpreted as *requiring* the use of NUREG-1307.¹¹

In any event, it is unlikely that the document would have even been eligible for incorporation by reference in the first instance because such incorporation is not appropriate if a document was produced by the same agency that is seeking incorporation, unless it is shown to possess “unique

⁶ See 5 U.S.C. § 552(a)(1) allowing for incorporation by reference in lieu of publication of a document in the *Federal Register*.

⁷ See generally, 1 C.F.R. Part 51, “Incorporation By Reference.”

⁸ *Id.* at §51.1(a).

⁹ *Id.* at §51.5.

¹⁰ *Id.* at §51.7(a).

¹¹ 10 C.F.R. §50.75(c)(2).

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or highly unusual qualities.”¹² Also, because the initial version of the NUREG was not even available at the time of publication of the final decommissioning rule,¹³ the NRC could not have satisfied the requirement that the document be on file with the Office of the Federal Register prior to publication of the rule in the *Federal Register*.¹⁴ And, finally, the NRC would have been required to follow the incorporation by reference procedures with respect to *each* subsequent revision of NUREG-1307, an action that certainly was never undertaken.¹⁵

3. Failure to Adhere to the NRC Regulatory Analysis Processes for Issuance of Guidance

In addition to the failures to adhere to the APA, for the NRC to assert that NUREG-1307 and its revisions must be treated even as guidance the NRC should have performed—in accordance with its own processes—a Regulatory Analysis¹⁶ for each new revision of NUREG-1307. Absent such analyses, NUREG-1307 and its revisions do not even satisfy the NRC’s own policies applicable to the development of agency guidance. These facts provide further confirmation that NUREG-1307 should be treated as no more than a technical advisory report that NRC licensees may choose to follow or not.

Consistent with Executive Order 12866,¹⁷ and as a matter of policy, the NRC has committed to perform a Regulatory Analysis for all “significant regulatory actions”¹⁸ as described in the

¹² *Id.* at §51.7(b).

¹³ See 53 *Fed. Reg.* 24018, “General Requirements for Decommissioning Nuclear Facilities”, June 27, 1988, at 24031, 24042 (the final version of NUREG-1307 (Reference 27) was not available at the time the Final Rule was published).

¹⁴ See *e.g.*, 1 C.F.R. §51.3(a)(3).

¹⁵ *Id.* at §51.1(f).

¹⁶ “Regulatory Analysis Guidelines of the U.S. Nuclear Regulatory Commission,” NUREG/BR-0058, Revision 4 (September 2004). See also, “Regulatory Analysis Technical Evaluation Handbook,” NUREG/BR-0184 (January 1997).

¹⁷ Executive Order 12866 “Regulatory Planning and Review,” 58 *Fed. Reg.* 51735 (Oct. 4, 1993).

¹⁸ E.O. 12866 defines significant regulatory actions as including actions that “are likely to result in a rule that may (1) have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, [or] a sector of the economy....”

Attachment 2

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Executive Order, *as well as* for an even broader range of regulatory actions that include “all mechanisms used by the NRC staff to establish or communicate generic requirements, guidance, requests, or staff positions that would affect a change in the use of resources by [NRC] licensees....”¹⁹ Thus, NRC Regulatory Analyses are typically performed for NRC regulations and orders, as well as bulletins, generic letters, regulatory guides, standard review plans and standard technical specifications, and for all actions that involve backfitting or that impose generic requirements (subject to review by the Committee to Review Generic Requirements).²⁰

With respect to NUREG-1307, no matter what regulatory stature the NRC intended to impart on the document, it is clear that it was postured to have generic applicability to licensees and that it would affect a change in the use of resources by NRC licensees. Therefore, it would be subject to the NRC Regulatory Analysis process.

Significantly, such analyses are intended to ensure that:

- The NRC’s regulatory decisions made in support of its statutory responsibilities are based on adequate information concerning the need for and consequences of proposed actions;
- Appropriate alternative approaches to regulatory objectives are identified and analyzed;
- No clearly preferable alternative is available to the proposed action; and
- Proposed actions subject to the backfit rule (10 CFR 50.109), and not within the exceptions at 10 CFR 50.109(a)(4), provide a substantial[footnote omitted] increase in the overall protection of the public health and safety or the common defense and security and that the direct and indirect costs of implementation are justified in view of this substantial increase in protection.²¹

None of these important factors have been considered or evaluated by the NRC with respect to NUREG-1307, including Revision 15. To highlight, we note first that, as the comments provided herein demonstrate, the NRC did not have “adequate information” on which to base its

¹⁹ NUREG/BR-0058, Rev. 4 at 5.

²⁰ *See Id.*, at vii.

²¹ *Id.*, at 4.

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determination of waste disposal costs. Nor have any alternatives to the approach taken by the NRC been proposed, let alone evaluated. And certainly no backfit determination (if applicable) has been performed.

Further, to emphasize the significance of the impact that revisions to NUREG-1307 can have, we note that the changes proposed by Revision 15 clearly fall within the reach of the “significant regulatory actions” standard of E.O. 12866. Specifically, if the erroneous modifications to Revision 15 are finalized, the increase in the decommissioning funding minimum required of NRC power reactor licensees would far exceed \$100 million. In fact, the impact on decommissioning funding minimums incurred by **each operating unit** could exceed \$100 million. And this impact would be felt essentially immediately. Licensees would be expected to adjust their decommissioning funding levels not only for the NRC, but the change would **materially and significantly impact licensees’ internal accounting, the amount of funds required to be collected to satisfy the NRC, licensees’ external financial reporting regarding income/expenses, and potentially other regulatory obligations.** ²²

At bottom, the regulatory status of NUREG-1307 satisfies neither the requirements applicable to substantive rules and regulation, nor the requirements applicable to NRC guidance materials. While the industry is open to discussion as to what the status of NUREG-1307 should be, it is apparent that—absent further measures to address the procedural deficiencies noted above—in its current form, NUREG-1307 (including Revision 15) can serve only as a technical advisory report. Thus, nuclear power plant licensees are in no way obligated to use the waste burial escalation factors included in NUREG-1307. Further, the material misapplication of pricing information discussed in Attachment 3 serves as a concrete example of why adequate process is not simply a formality: it is designed to avoid arbitrary decision-making by ensuring that regulators have access to the information and views necessary to make meaningful, fact-based decisions.

²² Both “costs to licensees” and “adverse effects on the efficient functioning of the economy and private markets” are included in the impacts that must be evaluated were a Regulatory Analysis be performed. *See Id.*, at Section 4.3.4 “Estimation of Impacts,” p. 30

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CHANGES TO THE VENDOR DISPOSAL OPTION IN REVISION 15 ARE ARBITRARY AND CAPRICIOUS

I. Introduction

The minimum formula amount required as part of the ultimate demonstration of adequate decommissioning funding is calculated using the formulas provided in 10 C.F.R. § 50.75(c). These formulas account for variation in reactor type (*i.e.*, PWR, BWR) and are scaled downward for units with smaller power levels (expressed in MWth). The formulas provided in § 50.75(c) yield minimum decommissioning funding amounts in 1986 dollars, which must then be adjusted annually to account for escalation of labor, energy, and waste burial costs.¹ This adjustment is performed by applying an annual adjustment factor that is greater than or equal to $0.65L + 0.13E + 0.22B$; where L and E are escalation factors for labor and energy, respectively, and B is an escalation factor for Low Level Radioactive Waste (LLRW) burial. The NRC's regulations state that the waste burial escalation factor (B) "is to be taken from NRC report NUREG-1307, Report on Waste Burial Charges."²

NUREG-1307 explains that the waste burial escalation factor is calculated by dividing the waste burial and disposition costs for the current year by the 1986 waste burial costs. Expressed mathematically, the waste burial escalation factor = $(R_X + \Sigma S_X) / (R_{1986} + \Sigma S_{1986})$.³ Thus, the size of the numerator in this ratio is dictated by the estimate of LLRW burial costs for the current year. As those costs increase, the waste burial escalation factor increases, which increases the annual adjustment factor (assuming the labor and energy escalation factors are relatively stable or increasing), which, in turn, increases the minimum amount required to demonstrate reasonable assurance of adequate decommissioning funding. A decrease in the numerator would have the opposite effect.

II. The LLRW Disposal Pricing Information Contained in Revision 15 was Misapplied to the LLRW Volumes Derived in Table A-4 in an Arbitrary and Capricious Fashion

As discussed in Attachment 1, since 1998, the NRC has recognized the substantial savings that can be realized through effective LLRW processing by adopting the vendor disposal option in

¹ 10 C.F.R. § 50.75(c)(2).

² *Id.*

³ "Report on Waste Burial Charges: Changes in Decommissioning Waste Disposal Costs at Low-Level Waste Burial Facilities," NUREG-1307, Rev. 15, at pg. 5-6 (Draft Rev. 15).

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Revision 8 of NUREG-1307. Through Revision 13 (2008), the pricing for the vendor disposal option was derived from price quotes provided by LLRW vendor companies. Beginning in 2010, with the publication of Revision 14, however, pricing for the vendor disposal option shifted from price estimates provided by waste vendors to a pricing proxy in the form of pricing for disposal of various types of Class A LLRW at the EnergySolutions disposal facility located in Clive, Utah. With that shift, the NRC applied the Clive disposal rates “to 100% of the Class A LLW volumes” in order to derive an updated LLRW cost estimate for the vendor disposal option, which, in turn, was used to update the B_x escalation factor for the vendor disposal option.⁴ This approach made sense, as no nuclear power plant outside of the Atlantic Compact and Northwest/Rocky Mountain compacts has access to the Barnwell or Hanford disposal facilities, and plants located within the Atlantic Compact are not necessarily required to send Class A LLRW to Barnwell.⁵ Further, disposal at the Clive facility is currently the least-cost option for disposal of Class A LLRW. Thus, the NRC’s assumption in Revision 14 that 100% of the Class A LLRW would be disposed of via the Clive site was based on the sound principle that licensees would act in an economically rational manner by pursuing the least-cost disposal option – *i.e.*, that no Class A waste which could be disposed of at Clive disposal prices would instead be voluntarily sent to a “full service direct disposal” facility (like Barnwell) at the much higher cost.⁶

In Revision 15 to NUREG-1307, while continuing to use pricing for disposal at the Clive site as a proxy for vendor disposal, the NRC attempted to make more nuanced distinctions between the volume of LLRW that is processed prior to disposal through vendors, and the volume of LLRW that is shipped directly to disposal facilities. In order to make these distinctions, the NRC used site-specific decommissioning funding estimates submitted by power reactor licensees for various regulatory purposes (*e.g.*, compliance with 10 C.F.R. § 50.75, 10 C.F.R. § 50.82), none

⁴ “Report on Waste Burial Charges: Changes in Decommissioning Waste Disposal Costs at Low-Level Waste Burial Facilities,” NUREG-1307, Rev. 14, at pg. A.3 (Rev. 14).

⁵ Omnibus Low-Level Radioactive Waste Interstate Compact Consent Act (including the Atlantic Compact), Public Law 99-240, Title II, at Article IV, ¶i.12. (“The Commission may, upon petition, grant an individual generator or group of generators in the region the right to export wastes to a facility located outside the region. Such grant of right shall be for a period of time and amount of waste and on such other terms and conditions as determined by the Commission and approved by the affected host states.”).

⁶ Although we agree with the approach of applying Clive pricing to 100% of the Class A LLRW volume, we note that it is unclear whether this was actually the approach taken in Revision 14. *See* discussion of 85%/5% ratio on page 4 of Attachment 1.

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of which were aimed at specifically distinguishing volumes of waste that would be sent to processors from the volumes of LLRW that would be shipped directly to disposal facilities. Such distinctions are not always necessary to provide accurate cost estimates in the recent LLRW disposal market because processing costs are often built into a single price for “disposal.” Thus, considerable judgment and, more specifically, assumptions were necessary in order to glean and distinguish the percentage of LLRW processed and the percentage of LLRW to be shipped directly to disposal facilities.

More importantly—although the agency is now using disposal pricing for the Clive, Barnwell, and Hanford sites in NUREG-1307—the NRC divided the waste volumes into two categories: (1) LLRW to be sent to vendors for processing, and (2) LLRW to be shipped for direct disposal at any disposal facility, **including the Clive site**. Using these categories, the NRC concluded that 60% of the total LLRW volume would fall into Category 1 (“Percent of Processed Waste”) and 40% of the total LLRW volume would fall into Category 2 (“Percent of Direct Disposal”).⁷ The NRC then, inexplicably, applied the higher Barnwell disposal pricing to all of the waste volume in the “Direct Disposal” category—**including those waste volumes designated for disposal at the Clive site in the site-specific cost estimates cited in Table A-4 of NUREG-1307**. The pricing information was misapplied in this fashion, despite the explicit recognition in Revision 15 that “[i]n most cases, Class A LLW volume not processed by vendors is assumed to be directly disposed of at the Clive, Utah facility.”⁸ The most striking—although not the only—example of this misapplication of the disposal pricing can be demonstrated by examining the site-specific cost estimate for Duane Arnold, which is referenced in Table A-4. In this instance, the site-specific cost estimate revealed that all Class A LLRW was assumed to be disposed of at the Clive site pursuant to a life-of-plant contract between the licensee and EnergySolutions. Class A LLRW accounts of approximately 99% of the total LLRW volume in the Duane Arnold cost estimate. But when this information was translated into Table A-4, 100% of the waste volume was categorized as “Direct Disposal,” **to which Barnwell pricing was applied**. Misapplication of the pricing data and the Duane Arnold example were discussed with the NRC staff at a category 2 public meeting held on November 7, 2012. The presentation used by the industry in that meeting is included as Attachment 4.

⁷ Draft Rev. 15, at Table A-4.

⁸ Draft Rev. 15, at pg. A-4.

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More generally, a sampling of the site-specific cost estimates referenced in Table A-4 reveals that, given the pricing information actually used in Draft Revision 15 (*i.e.*, pricing for disposal at Clive and Barnwell), the more relevant parsing of LLRW volume would be based on the LLRW disposal destination. For example, the two columns on the far right of the table below provide such a breakdown for some of the plants listed in Table A-4:⁹

Plant Name	<u>Rev. 15</u> Vendor Disposal Volume (percent processed LLRW)	<u>Rev. 15</u> Direct Disposal Volume (including waste destined for Clive and Barnwell)	<u>Site-Specific Estimate</u> Class A LLRW (Processed and/or destined for Clive)	<u>Site-Specific Estimate</u> Class B/C/GTCC (destined for Barnwell, or Barnwell as pricing proxy)
Palisades (SAFESTOR)	66%	34%	98%	2%
Pilgrim (SAFESTOR)	67%	33%	97%	3%
Vermont Yankee (DECON)	50%	50%	97%	3%
Vermont Yankee (SAFESTOR)	50%	50%	98%	2%
Braidwood 1	63%	37%	98%	2%

⁹ This data is meant to be illustrative and does not represent all of the plants listed in Table A-4. For example, data for the Salem and Hope Creek units were not included in this table, but will be addressed separately in a letter from PSEG Nuclear. These units, like Oyster Creek, are located in a state that is a member of the Atlantic LLRW compact. Although the site-specific estimates for the Salem and Hope Creek plants indicate that larger volumes of waste will be disposed of at the Barnwell site, we note that these estimates were prepared in 2002—six years prior to closure of the Barnwell site to out of compact waste in 2008. In any event, NEI does not recommend reconstructing Table A-4, but instead recommends that waste classification be used as a simple and meaningful method of categorizing LLRW volumes for disposal.

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Plant Name	<u>Rev. 15</u> Vendor Disposal Volume (percent processed LLRW)	<u>Rev. 15</u> Direct Disposal Volume (including waste destined for Clive and Barnwell)	<u>Site-Specific Estimate</u> Class A LLRW (Processed and/or destined for Clive)	<u>Site-Specific Estimate</u> Class B/C/GTCC (destined for Barnwell, or Barnwell as pricing proxy)
(DECON)				
Braidwood 1 (SAFESTOR)	68%	32%	99%	1%
Braidwood 2 (DECON)	63%	37%	98%	2%
Braidwood 2 (SAFESTOR)	68%	32%	99%	1%
Byron 1 (DECON)	62%	38%	98%	2%
Byron 1 (SAFESTOR)	67%	33%	99%	1%
Byron 2 (DECON)	62%	38%	98%	2%
Byron 2 (SAFESTOR)	67%	33%	99%	1%
La Salle 1 (DECON)	79%	21%	99%	1%
La Salle 1 (SAFESTOR)	85%	15%	99%	1%

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Plant Name	<u>Rev. 15</u> Vendor Disposal Volume (percent processed LLRW)	<u>Rev. 15</u> Direct Disposal Volume (including waste destined for Clive and Barnwell)	<u>Site-Specific Estimate</u> Class A LLRW (Processed and/or destined for Clive)	<u>Site-Specific Estimate</u> Class B/C/GTCC (destined for Barnwell, or Barnwell as pricing proxy)
La Salle 2 (DECON)	79%	21%	99%	1%
La Salle 2 (SAFESTOR)	85%	15%	99%	1%
Oyster Creek (DECON)	55%	45%	88%	12%
Oyster Creek (SAFESTOR)	63%	37%	94%	6%
Kewaunee (DECON)	12%	88%	97%	3%
Duane Arnold (DECON)	0%	100%	99%	1%
Duane Arnold (SAFESTOR)	0%	100%	99%	1%

Although this is just a sampling of the plants listed in Table A-4, it illustrates the disparity between the information provided in Table A-4 and the **relevant** volumetric distinctions that are important to properly applying the pricing information used in Revision 15. These volumetric

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distinctions track with LLRW classification, which is the method that NEI recommends NRC use in categorizing LLRW volumes for disposal. This proposal is discussed in further detail below.

In sum, misapplication of the pricing data—as described above—is **arbitrary and capricious** because:

- The great majority of the site-specific cost estimates relied upon by the NRC staff indicate that most (if not all) Class A LLRW will be disposed of at the Clive site;¹⁰
- The NRC explicitly acknowledged that the site-specific cost estimates revealed that “[i]n most cases, Class A LLRW volume not processed by vendors is assumed to be directly disposed of at the Clive, Utah facility;”¹¹

¹⁰ See, e.g., DECOMMISSIONING COST ANALYSIS FOR THE MONTICELLO NUCLEAR GENERATING PLANT, October 2005, at Section 5, pg. 2 (“ For the Envirocare [Clive] facility, an average disposal rate of . . . was used. This schedule was used to estimate the disposal fees for most plant components and all activated concrete unsuitable for processing or recovery.”); PRELIMINARY DECOMMISSIONING COST ANALYSIS FOR THE PILGRIM NUCLEAR POWER STATION, July 2008, at Section 1.7.7 (“The EnergySolutions’ disposal facility was used as the destination for the majority of the waste volume generated by decommissioning (98%). EnergySolutions does not have a license to dispose of the more highly radioactive waste (Class B and C) generated in the dismantling of the reactor. As such, the disposal costs for this material (representing approximately 1.8% of the waste volume) were based upon Barnwell disposal rates as a proxy.”); DECOMMISSIONING COST ANALYSIS FOR THE PRAIRIE ISLAND NUCLEAR GENERATING PLANT, Aug. 2008, at Section 5 (“In the interim, and as a proxy, the EnergySolutions’ disposal facility in Clive, Utah is used as the destination for the lowest level, Class A, radioactive waste.”)(footnote omitted); DECOMMISSIONING COST ANALYSIS FOR THE COOPER NUCLEAR GENERATING STATION, Dec. 2008, at Section 3.4.6 (“The cost to dispose of the majority of the material generated from the decontamination and dismantling activities is based upon the current cost for disposal at EnergySolutions facility in Clive, Utah. Disposal costs for the higher activity waste (Class B and C) were based upon the last published rate schedule for noncompact waste for the Barnwell facility (as a proxy).”); DECOMMISSIONING COST ESTIMATE FOR THREE MILE ISLAND, UNIT 1, Feb. 2009, at Section 3.5.7 (“The cost to dispose of the majority of the material generated from the decontamination and dismantling activities is based upon the current cost for disposal at EnergySolutions’ facility in Clive, Utah. Disposal costs for the higher activity waste (Class B and C) were based upon the last available rate schedule for the Barnwell facility (as a proxy).”); DECOMMISSIONING COST ANALYSIS FOR THE LASALLE COUNTY STATION UNITS 1 AND 2, June 2009, at Section 3.5.6 (“The cost to dispose of the majority of the material generated from the decontamination and dismantling activities is based upon Exelon’s current disposal agreement with EnergySolutions for its facility in Clive, Utah. Since the EnergySolutions facility is not able to accept the higher activity waste (Class B and C) generated in the decontamination of the reactor vessel and segmentation of the components closest to the core, the cost of disposal of this material at a yet-to-be determined facility were based upon Exelon’s last negotiated rates for the Barnwell facility.”); DECOMMISSIONING COST ESTIMATE STUDY FOR THE DUANE ARNOLD ENERGY CENTER, REV. 1, Jan. 2010, at Section 3.5 (“In accordance with the existing Life-of-Plant Disposal Agreement (Ref. No. 8), all Class A waste that meets the Clive facility waste acceptance criteria is to be disposed of at Clive. All reported waste disposal costs include packaging, transportation, and any applicable surcharges.”).

¹¹ Draft Rev. 15, at pg. A-4

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- The Clive site is currently the least-cost disposal option for Class A LLRW and accepts Class A LLRW nationally, without restriction by the Northwest Compact;
- Application of Barnwell pricing to Class A LLRW destined for the Clive site requires the assumption that licensees will act in an economically irrational fashion by voluntarily paying a higher price to dispose of Class A LLRW at the Barnwell facility, rather than the Clive site;
- Application of the Barnwell pricing to Class A LLRW destined for the Clive site ignores the fact that South Carolina law currently prohibits the disposal of Class A LLRW generated outside of the Atlantic Compact (*i.e.*, New Jersey, Connecticut, South Carolina) at the Barnwell site.¹² Stated more directly, disposal of nonregional waste at the Barnwell site is currently illegal.

Further, misapplication of the pricing data was not a mistake. To the contrary, the NRC explicitly described this arbitrary mischaracterization as a “Key Assumption” in a presentation discussed at the November 7, 2012, category 2 public meeting referenced above.¹³ Specifically, slide 8 of that presentation states:

¹² “Atlantic Interstate Low-Level Radioactive Waste Compact Implementation Act,” SC ST § 48-46-40(A)(6)(a) (“After fiscal year 2008, the board shall not authorize the importation of nonregional waste for purposes of disposal.”).

¹³ The entire NRC presentation from the November 7, 2012 public meeting is included as Attachment 5 to this letter.

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NUREG-1307, Revision 15 (Draft)

- No price quotes obtained from vendors
- Price quote obtained for EnergySolutions Utah disposal facility
- Based on available data, B_x for vendor option based on EnergySolutions Utah facility data only
- Assumed 60% of LLW goes to waste vendors and 40% goes to generic LLW site (Barnwell)
 - Change made to further bring the formula decommissioning cost estimate into alignment with site-specific decommissioning cost estimates (split reflects the weighted average of the percentage of the total LLW volume going to vendors based on data from the site specific decommissioning cost estimates – Table A-4)
 - Key Assumption: waste vendor volume is priced at EnergySolutions cost and all other waste volume (i.e., that designated to go directly to EnergySolutions and/or Barnwell) is priced at Barnwell cost



This “Key Assumption” was developed in a results-driven attempt to increase the minimum formula amount described in 10 C.F.R. § 50.75—with no regard for the fact that the “Key Assumption” clearly misrepresents actual LLRW disposal costs, and without any apparent evidence linking LLRW disposal costs to the NRC staff’s concern that the formula amount does not align with site-specific decommissioning cost estimates.

More specifically, slide 8 from the NRC’s November 7 presentation states that the NRC modified the vendor disposal option in Revision 15 in order to “bring the formula decommissioning cost estimate into alignment with site-specific decommissioning cost estimates.” On slide 9, the NRC stated that revising Revision 15 so that the Clive disposal pricing applies to 95% of the decommissioning LLRW (i.e., Class A LLRW) and Barnwell pricing applies to the remaining 5% (i.e., Class B/C LLRW)—a ratio that NEI believes best reflects the current LLRW disposal landscape as well as the information contained in the site-specific cost estimates used by the NRC to develop Revision 15—“would make under estimation of decommissioning costs by the formula even worse.”¹⁴ So, in order to address a general concern regarding disparities between the site-specific cost estimates and the amount derived by

¹⁴ See Attachment 5.

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application of the formula required under 10 C.F.R. § 50.75, the available LLRW disposal pricing information was misapplied to ensure that the “correct” result was obtained (*i.e.*, an increase in the minimum formula amount). In addition to being inappropriate on its face, this misapplication of data is even more perplexing given that, in response to a direct question during the November 7 public meeting, the NRC staff stated that it did not believe that LLRW burial costs were the cause of its concerns regarding the adequacy of the minimum funding amounts calculated pursuant to 10 C.F.R. § 50.75. The purpose of revising NUREG-1307 is to ensure that the waste burial escalation factor provides a reasonably accurate and meaningful adjustment to the minimum amounts calculated pursuant to the requirements of 10 C.F.R. § 50.75. It should not be used as an opportunity to “fix” perceived problems with the minimum funding formula that would otherwise require a rulemaking to modify 10 C.F.R. Part 50.

Indeed, as discussed above in Attachment 1, the arbitrary “Key Assumption” relied upon in Revision 15 would increase the minimum formula amount by approximately \$134,589,150.00 for a BWR with a thermal power rating of 3,400 MWth and approximately \$129,985,050.00 for a PWR with a thermal power rating of 3,400 MWth. Changes to regulatory documents that have impacts of this magnitude must be fact-based, logical, and rational. Revision 15 to NUREG-1307 meets none of these criteria and should not be finalized with this fatal flaw.

III. If Revision 15 is Finalized by December 31, 2012, Waste Volumes Should be Categorized by Waste Class and Clive Pricing Applied to All Class A LLRW

Waste classification is currently the best indicator of where LLRW will be disposed. Specifically, as borne out in the great majority of the site-specific cost estimates referenced in Table A-4, licensees will exercise economically rational behavior by selecting the least-cost option for Class A LLRW disposal. At the current time, that least-cost option is disposal at the Clive, Utah site. Thus, it makes sense to categorize LLRW volume by waste classification, and to apply disposal pricing provided by EnergySolutions for the Clive site to that waste volume. Until a more realistic option presents itself, pricing for the Barnwell facility could be used as a pricing proxy for Class B and C LLRW.

EPRI has published a number of experience reports for the nuclear power plant decommissioning projects conducted in the United States. LLRW volume data was taken from the following reports to arrive at the decommissioning waste volume estimates provided in the table below:

- EPRI Report # 1011734, Maine Yankee Decommissioning – Experience Report

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- EPRI Report # 1013511, Connecticut Yankee Decommissioning – Experience Report
- EPRI Report #1015121, Rancho Seco Nuclear Generating Station Decommissioning Experience Report

Summary of Decommissioning Waste Class Breakdown

Waste Class	PWR Volume ft ³ /decommissioning	% of PWR Total	BWR Volume ft ³ /decommissioning	% of BWR Total
A	612,200	97.6 %	1,000,000	98.5 %
B/C	15,090	2.4 %	15,090	1.5 %
Total	627,290	100 %	1,015,090	100 %
Potentially Disposable at a RCRA Disposal Facility	414,000	66 %	670,000	66 %

Based on the EPRI results, if the NRC decides to finalize Revision 15 by December 31, 2012, without additional stakeholder input, NEI recommends that the NRC use a volume ratio of 95%/5% for what was formerly known as the “Vendor Disposal Option.” More specifically, this would provide an option allowing licensees to assume that 95% of their total LLRW volume (*i.e.*, all Class A LLRW) will be disposed of at Clive, Utah rates. Barnwell pricing would be used as a proxy for the remaining 5% of the waste volume (*i.e.*, Class B/C LLRW). This fact-based approach is rational and credible because:

- It is consistent with the NRC’s observation that “[i]n most cases, Class A LLW volume not processed by vendors is assumed to be directly disposed of at the Clive, Utah, facility;”¹⁵
- It properly assumes that licensees will act in an economically rational way by disposing of Class A LLRW at the Clive site, which is currently the least-cost disposal option for

¹⁵ Draft Rev. 15, at pg. A-4.

Attachment 3

NEI Comments on Revision 15, NUREG-1307

CHANGES TO THE VENDOR DISPOSAL OPTION IN REVISION 15 ARE ARBITRARY AND CAPRICIOUS

Class A LLRW and accepts Class A LLRW nationally, without restriction by the Northwest Compact;

- It recognizes the fact that South Carolina law currently prohibits the disposal of Class A LLRW generated outside of the Atlantic Compact (*i.e.*, New Jersey, Connecticut, South Carolina) at the Barnwell site.¹⁶
- The NRC updates NUREG-1307 regularly and future updates can take changes in the LLRW environment into account.

In addition, this approach is appropriately conservative because:

- **Processing will reduce waste volumes:** The reason that decommissioning projects rely on waste vendors is to reduce the percentage of waste that requires disposal as Class A LLRW. As observed in NUREG-1307, there are a variety of commercially available volume reduction techniques. Decommissioning projects also evaluate other potential disposal pathways, including onsite disposal and survey and release of waste to maximize the portion that can be disposed of in an industrial landfill. Thus, the involvement of vendors offers the prospect of reducing the volume priced as Class A LLRW.
- **Contract pricing provides reduced rates:** The rates for Class A disposal that are used in NUREG-1307 are higher than those available to the vast majority of nuclear power plant owners. EnergySolutions has Life-of-Plant (LOP) Disposal Agreements with 11 utilities or utility consortiums representing 84 power plants. Contracted rates for disposal of decommissioning waste include discounts from standard pricing, thus the actual rates that will be made are lower than the rates assumed in NUREG-1307.
- **The volume ratio overestimates Class B/C wastes:** Assuming that 95% of the decommissioning waste is Class A is conservative based on historical experience, and that percentage is likely to become even more conservative in the future. For the Zion decommissioning project that EnergySolutions currently is performing, the estimate of Class B/C waste is <0.1%. In addition, the estimates generated by EPRI indicate Class A LLRW will comprise 97.6% and 98.5% of the total LLRW volume generated during decommissioning of PWRs and BWRs, respectively. EPRI's analysis also estimates up to

¹⁶ "Atlantic Interstate Low-Level Radioactive Waste Compact Implementation Act," SC ST § 48-46-40(A)(6)(a) ("After fiscal year 2008, the board shall not authorize the importation of nonregional waste for purposes of disposal.").

Attachment 3

NEI Comments on Revision 15, NUREG-1307

CHANGES TO THE VENDOR DISPOSAL OPTION IN REVISION 15 ARE ARBITRARY AND CAPRICIOUS

66% of the total volume of LLRW generated through decommissioning may be suitable for disposal at industrial landfills (rather than near-surface disposal facilities licensed to accept LLRW).

- **Opening of the Texas Compact disposal facility could reduce Class B/C backlogs:** NUREG-1307 notes that licensees should plan for increased costs due to backlogs of Class B/C that will drive up decommissioning costs. The Waste Control Specialists' (WCS) disposal site in Texas is now operating and the Texas Low-Level Radioactive Waste Disposal Compact Commission has approved multiple petitions to import LLRW produced by non-compact generators. Thus, the WCS facility could provide a disposal outlet for Class B and C wastes during operation, reducing potential for these waste streams to result in increased decommissioning costs.

Given the information provided in Revision 15, NEI anticipates that adoption of a 95%/5% option would result in a B_x of approximately 10.966 for a PWR and 11.845 for a BWR.

Attachment 4

NEI Comments on Revision 15, NUREG-1307

**NUCLEAR INDUSTRY VIEWS ON TABLE A-4 OF PROPOSED REVISION
15 TO NUREG-1307**

NRC PUBLIC MEETING

NOVEMBER 7, 2012

Nuclear Industry Views on Table A-4 of Proposed Revision 15 to NUREG-1307

NRC Public Meeting
November 7, 2012

§ 50.75 Reporting and recordkeeping for decommissioning planning.

(c) Table of minimum amounts (January 1986 dollars) required to demonstrate reasonable assurance of funds for decommissioning by reactor type and power level, P (in MWt); adjustment factor.¹

	<i>Millions</i>
(1)(i) For a PWR:	
greater than or equal to 3400 MWt	\$105
	<i>Millions</i>
between 1200 MWt and 3400 MWt (For a PWR of less than 1200 MWt, use P=1200 MWt)	\$(75+0.0088P)
(ii) For a BWR:	
greater than or equal to 3400 MWt	\$135
between 1200 MWt and 3400 MWt (For a BWR of less than 1200 MWt, use P=1200 MWt)	\$(104+0.009P)

- Minimum funding to provide reasonable assurance calculated as (1986 dollars):
 - PWR \geq 3400 MWt - \$105 million
 - BWR \geq 3400 MWt - \$135 million
 - Scaled downward for smaller units
- Values are adjusted annually to take into account escalated labor, energy and waste burial costs

§50.75 Reporting and recordkeeping for decommissioning planning.

(1) Table of minimum amounts (January 1986 dollars) required to demonstrate reasonable assurance of funds for decommissioning by reactor type and power level P (in MWt): adjustment factor.

(2) An adjustment factor at least equal to $0.65L + 0.13E + 0.22B$ is to be used where L and E are escalation factors for labor and energy, respectively, and are to be taken from regional data of U.S. Department of Labor Bureau of Labor Statistics and B is an escalation factor for waste burial and is to be taken from NRC report NUREG-1307, "Report on Waste Burial Charges."

- Annual adjustment using the following formula:
 - $0.65L + 0.13E + 0.22B$
 - L = Labor escalation factor
 - Source: U.S. Dept. Labor
 - E = Energy escalation factor
 - Source: U.S. Dept. of Labor
 - B = **LLRW burial escalation factor**
 - Source: NUREG-1307

Table 2-1 Values of B_x as a Function of LLW Burial Site, Waste Vendor, and Year^(a)

Year	B_x Values for Washington Site ^(a)				B_x Values for South Carolina Site								B_x Values for Generic LLW Disposal Site ^(a)			
	Direct Disposal		Direct Disposal with Vendors ^(f)		Atlantic Compact ^(c)				Non-Atlantic Compact ^(c)				Direct Disposal		Direct Disposal with Vendors ^(f)	
					PWR	BWR	PWR	BWR	PWR	BWR	PWR	BWR				
2012	7.975	6.709	7.631	6.337	29.764	26.062	17.892	17.083	NA	NA	NA	NA	29.764	26.062	17.892	17.083
2010	8.035	7.423	6.588	5.458	27.292	24.356	12.280	12.549	NA	NA	NA	NA	27.292	24.356	12.280	12.540
2008	8.283	23.185	5.153	27.889	25.231	22.504	9.872	11.198	NA	NA	NA	NA	25.231	22.504	9.872	11.198
2006	6.829	11.702	3.855	9.008	22.933	20.451	8.888	8.815	22.888	22.818	8.888	10.888	NA	NA	NA	NA
2004	5.374	13.157	3.846	11.755	19.500	17.589	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA
2002	3.634	14.549	5.748	15.571	17.922	15.986	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA

For purposes of today's discussion, we are primarily concerned with the B_x values for the "Vendor Option"

- (a) The values shown in this table are developed in Appendix B, where the values for the Washington PWR and BWR values by dividing the calculated burial costs for each site and year by the Washington site burial costs calculated for the year 1986.
- (b) Effective 1/1/93, the Washington site no longer accepted waste from outside the Northwest and Rocky Mountain Compacts.
- (c) Effective 7/1/2000, rates are based on whether a waste generator is or is not a member of the Atlantic Compact.
- (d) Effective 7/1/2008, the South Carolina site no longer accepted waste from outside the Atlantic Compact.
- (e) B_x values for the generic site are assumed to be the same as that provided for the Atlantic Compact, for lack of a better alternative at this time.
- (f) Effective with NUREG-1307, Revision 15 this option assumes that 60% of the total waste volume is dispositioned using waste vendors and the Clive, Utah, disposal facility and the remaining 40% is dispositioned through direct disposal at one of the two full-service disposal facilities. See Section A.3.

How is B_x calculated?

B_x = Low-level waste (LLW) burial and disposition cost adjustment, January of 1986 to Year X (i.e., burial and disposition cost in Year X, divided by the burial cost in January of 1986),

$$= (R_x + \Sigma S_x) / (R_{1986} + \Sigma S_{1986})$$

where:

R_x = radioactive waste burial/disposition costs (excluding surcharges) in Year X dollars,

ΣS_x = summation of surcharges in Year X dollars,

R_{1986} = radioactive waste burial costs (excluding surcharges) in 1986 dollars, and

ΣS_{1986} = summation of surcharges in 1986 dollars

B_x is the ratio of current disposal costs & surcharges : 1986 costs & surcharges. If numerator (i.e., current disposal costs and surcharges) is incorrectly inflated, B_x will be incorrectly inflated.

NUREG-1307, at pgs. 5-6

How is B_x calculated for “Vendor Option”?

In support of NUREG-1307, Revision 15 price quotes to disclose all components of the reference PWR and BWR were obtained for disposal of Class A LLW at the Clive, Utah, disposal facility. Unit costs, exclusive of taxes, were provided for several different categories of components, which are listed in Table A-2. These rates assume no volume discounts, which can be substantial. In addition, a 10 percent tax was assumed. Under the vendor option, the rates in Table A-3 were applied to 60 percent of the Class A LLW volumes, which assumes a vendor:direct disposal LLW volume ratio of 60:40 with 60 percent of the waste generated from decommissioning being shipped to a waste vendor (vendor disposal) and 40 percent being shipped to a full-service disposal facility for disposal (direct disposal). This ratio is based on recently submitted licensee-developed site-specific decommissioning cost estimates as discussed above, representing more than 30 cover reactor decommissioning scenarios. Information on LLW disposition assumptions used in each of these estimates is summarized in Table A-4, which also shows the vendor and direct disposal ratios assumed in the licensee-submitted estimates. The staff will continue to collect additional data and may make additional updates to the vendor disposal ratio in future revisions to NUREG-1307, based on updated information.

Vendor Option Assumes:

- Clive rates applied to 60% of LLW volume
- Barnwell rates applied to 40% of LLW volume (for Atlantic Compact and Generic Disposal Site)
- Barnwell rates are higher than the Clive rates
- **The price difference between the “Direct Disposal” and “Vendor Disposal” option in Rev. 15 appears to be the pricing difference between disposing of waste at the Clive site (see Table A-3) versus disposing of waste at a “Full-Service” site priced like Barnwell (as opposed to whether a waste vendor/processor is actually involved in the disposal).**

Table 2-1 Values of B_x as a Function of LLW Burial Site, Waste Vendor, and Year^(a)

Year	B_x Values for Washington Site ^(b)				B_x Values for South Carolina Site								B_x Values for Generic LLW Disposal Site ^(e)			
	Direct Disposal		Direct Disposal with Vendors ^(f)		Atlantic Compact ^(c)				Non-Atlantic Compact ^(d)				Direct Disposal		Direct Disposal with Vendors ^(f)	
					PWR	BWR	PWR	BWR	PWR	BWR	PWR	BWR				
2012	7.975	6.709	7.631	6.337	29.764	26.062	17.892	17.083	NA	NA	NA	NA	29.764	26.062	17.892	17.083
2010	8.035	7.423	6.588	5.458	27.292	24.356	12.280	12.540	NA	NA	NA	NA	27.292	24.356	12.280	12.540
2008	8.283	23.185	5.153	20.889	25.231	22.504	9.872	11.198	NA	NA	NA	NA	25.231	22.504	9.872	11.198
2006	6.829	11.702	3.855	9.008	22.933	20.451	8.600	9.345	23.030	20.813	8.683	10.206	NA	NA	NA	NA
2004	5.374	13.157	3.846	11.755	19.500	17.389	7.790	8.347	21.937	17.970	7.934	8.863	NA	NA	NA	NA
2002	3.634	14.549	5.748	15.571	17.922	15.988	9.273	8.626	18.732	16.705	9.467	8.860	NA	NA	NA	NA

(a) The values shown in this table are developed in Appendix B, with all values normalized to the 1986 Washington PWR and BWR values by dividing the calculated burial costs for each site and year by the Washington site burial costs calculated for the year 1986.

(b) Effective 1/1/93, the Washington site no longer accepted waste from outside the Northwest and Rocky Mountain Compacts.

(c) Effective 7/1/2000, rates are based on whether a waste generator is or is not a member of the Atlantic Compact.

(d) Effective 7/1/2008, the South Carolina site no longer accepted waste from outside the Atlantic Compact.

(e) B_x values for the generic site are assumed to be the same as that provided for the Atlantic Compact, for lack of a better alternative at this time.

(f) Effective with NUREG-1307, Revision 15, this option assumes that 60% of the total waste volume is dispositioned using waste vendors and the Clive, Utah, disposal facility and the remaining 40% is dispositioned through direct disposal at one of the two full-service disposal facilities. See Section A.3.

How is B_x calculated for “vendor option”?

In support of NUREG-1307, Revision 1E, price quotes to dispose of components of the reference PWR and BWR were obtained for disposal of Class A LLW at the Clive, Ohio, disposal facility. Unit costs, exclusive of taxes, were provided for several different categories of components, which are listed in Table A-3. These rates assume no volume discounts, which can be substantial. In addition, a 10 percent tax was assumed. Under the vendor option, the rates in Table A-3 were applied to 60 percent of the Class A LLW volumes, which assumes a vendor/direct disposal LLW volume ratio of 60%/40% with 60 percent of the waste generated from decommissioning being shipped to a waste vendor (vendor disposal) and 40 percent being shipped to a full-service disposal facility for disposal (direct disposal). This ratio is based on recently submitted licensee-developed site-specific decommissioning cost estimates, as discussed above, representing more than 50 power reactor decommissioning scenarios. Information on LLW disposal assumptions used in each of these estimates is summarized in Table A-4, which also shows the vendor and direct disposal ratios assumed in the licensee-submitted estimates. The staff will continue to collect additional data and may make additional updates to the vendor disposal ratio in future revisions to NUREG-1307, based on updated information.

How was 60%/40% ratio derived?

- Licensee-developed, site-specific cost estimates
 - These cost estimates were not developed for the purpose of updating NUREG-1307
- Interpretation of the data was necessary in order to derive the 60%/40% assumption
- Appears that the data was interpreted to fit the “Vendor” vs. “Direct” disposal paradigm (i.e., if no vendor is explicitly referenced, then direct disposal is assumed)
- BUT the “Vendor” vs. “Direct” distinction has come untethered from the distinction that actually drives pricing (i.e., disposal at Clive versus disposal at a “Full Service” site like Barnwell).

Problem:

- **Through application of the 60%/40% assumption, NUREG-1307 incorrectly assumes that Class A LLW – which is clearly designated for disposal at Clive – will instead be disposed of at a facility that is priced like the Barnwell facility.**

In addition, the staff reviewed preliminary decommissioning cost estimates that NPP licensees provided to the NRC for the following reasons:

- in accordance with 10 CFR 50.75(f)(2), which requires submittal of a preliminary decommissioning cost estimate at or about 5 years before the projected end of operations of the plant, or
- in support of the requirement in 10 CFR 50.75(f)(1) to report every 2 years on the status of the decommissioning fund for the plant.

A summary of the information licensees provided is presented in Table A-4 for several NPPs. This table shows licensees' assumptions on how LLW generated from decommissioning their plants will be dispositioned. The maximum amount that waste vendors were assumed to process and recycle is 85 percent (i.e., LaSalle 1 & 2 SAFSTOR scenario) of the total LLW volume, with the minimum of 0 percent (i.e., Duane Arnold) where all of the Class A LLW is assumed to be direct disposed at the Clive, Utah, facility. Generally, however, the vendor processed waste volume is assumed to be between 50 percent and 80 percent of the total waste volume. In most cases, Class A LLW volume not processed by vendors is assumed to be directly disposed of at the Clive, Utah, facility. However, a number of cases assume that some Class A LLW, representing 5 percent to 23 percent of the total LLW volume, is disposed of at a full-service disposal facility. In all cases, Class B and C LLW is assumed to be disposed of at a full-service disposal facility with disposal rates representative of recent Barnwell disposal facility rates for these LLW classes.

NUREG-1307, at pg. A-4

Does the 60%/40% assumption accurately reflect how much it will cost to dispose of LLW? No.

- NUREG-1307 acknowledges that, in most cases, Class A LLW not processed by vendors will be directly disposed of at the Clive site.
- For example, NUREG-1307 notes that for Duane Arnold 0% of waste would be processed via a waste vendor, but that all Class A waste is assumed to be direct disposed at the Clive site.
- **So, for Duane Arnold, NUREG-1307 categorizes 100% of the LLW as "Direct Disposal" (see Table A-4) – which assumes Barnwell pricing.**
- Categorizing disposal of Class A LLW this way contributed to derivation of the 40% "Direct Disposal" estimate.
- **Barnwell pricing is applied to that 40%, BUT in reality – e.g., Duane Arnold – the great majority of Class A waste attributed to "Direct Disposal" will actually be disposed of at Clive.**
- This type of discrepancy runs throughout Table A-4
- **Actual "Clive" to "Full-Service" ratios for are on the order of 95%/5%, not 60%/40%**

**Decommissioning Cost Estimate Study
for the
Duane Arnold Energy Center**

Project No. 137079

Revision 1

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1/27/10
Date

- New Report
- Title Change
- Report Revision
- Report Rewrite

Effective
Date 1/27/10

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3.4 Waste Disposal

.....

Class A Disposal Options and Rates

In accordance with the existing Life-of-Plant Disposal Agreement (Ref. No. 8), all Class A waste that meets the Clive facility waste acceptance criteria is to be disposed of at Clive. All reported waste disposal costs include packaging, transportation, and any applicable surcharges.

.....

Class B and C Disposal Options and Rates

.....

The question then becomes: what disposal rate is to be used in the decommissioning cost estimate for Class B and C LLRW and where is it to go? Since the cost estimate is based on current or present day dollars, the disposal cost for Class B and C LLRW should be equivalent to the cost that would be incurred if a new disposal facility were to be licensed and begin operations today. *EnergySolutions* has reviewed several studies developed in an attempt to quantify the disposal costs associated with a new disposal facility constructed in today's environment. Based on this review, it is *EnergySolutions*' belief that Class B and C LLRW disposal rates based on the published base rate and surcharge structure for the Barnwell facility is the most reasonable approach. This approach is also based on the fact that NRC requires utilities to update their decommissioning cost estimates every five years so that changes in disposal options and costs can be taken into account.

Table 6-8
Scenario 2 Waste Disposal Volumes
(Cost Excludes Contingency - 2008 Dollars)

Barnwell Pricing
Assumed in Estimate

Facility and Waste Class	Waste Weight (LBS)	Waste Volume (CY)	Actual Volume (CY)	Packaging Cost	Transportation Cost	Surcharge Cost	Base Bidding Cost	Total Disposal Cost
Class B and C Facility								
Class B	122,531	1,287	2,104	\$207,315	\$722,333	\$4,226,716	\$1,209,590	\$6,565,943
Class C	168,430	884	2,015	\$903,000	\$745,693	\$8,172,357	\$1,158,424	\$10,979,483
GTOC	290,961	2,171	4,119	\$1,110,315	\$1,468,026	\$12,399,073	\$2,368,013	\$17,345,427
Energy Solutions								
Class A - Debris	13,304,744	224,683	226,652	\$569,797	\$2,382,934	\$0	\$12,375,127	\$15,527,868
Class A - Oversized Debris	4,488,365	67,190	67,190	\$47,153	\$447,430	\$0	\$7,054,916	\$7,549,559
Class A - CWF	2,808,407	56,430	38,489	\$496,934	\$3,846,617	\$0	\$8,319,592	\$12,663,294
Class A - Large Component	3,746,792	49,642	66,425	\$1,172,945	\$3,562,890	\$0	\$8,134,504	\$22,869,860
	24,348,808	379,944	398,756	\$2,286,880	\$10,239,921	\$0	\$45,883,740	\$58,410,540
Other								
Local Construction Debris								
Landfill	58,842,438	456,767	458,767	\$0	\$23,001			
Process for On-Site Fill	235,100,550	3,526,212	3,528,212	\$0	\$0			
Scrap Metal Recycler	161,197,311	1,100,763	1,100,763	\$0	\$554,655			
Grand Total	474,780,768	5,469,857	5,990,616	\$3,397,195	\$12,085,553	\$12,399,073	\$55,347,260	\$83,229,116

Clive Pricing Assumed
in Estimate Consistent
with Life-of-Plant
Disposal Agreement

Table A-4 Disposition Destination of LLW Assumed in Preliminary Decommissioning Cost Estimates^(a)

PLANT	TYPE	CAPACITY (MWe)	METHOD	DOCKET NO.	ADAMS ACCESSION NO. ^(b)	Class A, B, C & GTCC Waste Disposal	Processed Waste Disposal	Total Volume of Waste Generated	Percent of Processed Waste	Percent of Direct Disposal
						Volume (Thousands ft ³)	Volume (Thousands ft ³)	(Direct + Vendor Disposal)	(Vendor Disposal Option)	(Direct Disposal)
Braidwood 1	FWR	178		50-456	ML100120241 - 31/11/2010					
						Scenario 1	Scenario 2	114	192	306
			DECON			106	223	329	67.88%	32.12%
			SAFSTOR							
Braidwood 2	FWR	152		50-457	ML100120241 - 31/11/2010					
						Scenario 1	Scenario 2	114	192	306
			DECON			106	223	329	67.88%	32.12%
			SAFSTOR							
Byron 1	FWR	164		50-454	ML093210130 -					
						Scenario 1	Scenario 2			
									67.57%	32.43%
Byron 2	FWR									
						Scenario 1	Scenario 2			
									67.57%	32.43%
Cooper	BWR									
						Scenario 1	Scenario 2			
									62.70%	37.30%
Diablo Canyon 1	FWR									
						Scenario 1	Scenario 2			
									Not available	100.00%
Diablo Canyon 2	FWR	118		50-323	32/12/2002					
						Scenario 1	Scenario 2	110	Not available	120
			SAFSTOR			124	Not available	124	Not available	100.00%
			DECON							
Duane Arnold	BWR	580		50-331	ML100540029 - 31/27/2010					
						Scenario 1	Scenario 2	401	Not available	401
			DECON			401	Not available	401	Not available	Not available
			SAFSTOR							
Hope Creek	BWR	1061			ML091820277 - 36/23/2009	228	233	461		

- Incorrectly inflates % of LLW assumed to be disposed of via "Full Service" facilities priced like Barnwell
- Under the current methodology used in NUREG-1307, for Atlantic Compact and the Generic Disposal Site "Direct Disposal" equates to disposal via at a facility priced like Barnwell.
- BUT the Duane Arnold site-specific cost estimate clearly indicates that all Class A waste will be disposed of at the Clive site, which is priced substantially lower than Barnwell

Attachment 5
NEI Comments on Revision 15, NUREG-1307

NUREG-1307, REV. 15, UPDATE

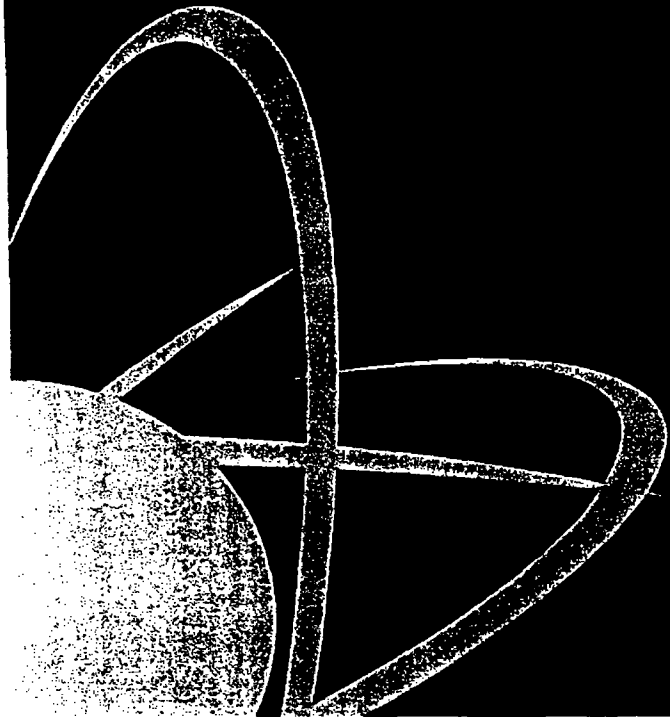
S.M. SHORT

J.A. GASTELUM

U.S. NUCLEAR REGULATORY COMMISSION

NRC PUBLIC MEETING

NOVEMBER 7, 2012



NUREG-1307, Rev. 15, Update

S.M. Short
J.A. Gastelum

Discussion Topics

- Historical Development and Changes
- Rev. 13 Changes
- Rev. 14 Changes
- Rev. 15 Changes

Historical Development and Changes

- NUREG-1307 first issued in July 1988
 - Bi-annual report required by 10 CFR 50.75(c): provides updated LLW burial cost coefficient (B_x) in minimum decommissioning fund formula
 - Basis for minimum decommissioning cost formula is provided in NUREG/CR-0130 Addendum 4 (PWR) and NUREG/CR-0672 Addendum 3 (BWR), which are in 1986 dollars
 - First issue of NUREG-1307 updated B_x from 1986 to 1988 dollars
 - B_x coefficients developed for 3 LLW disposal sites using available rate schedules for each: Barnwell, U.S. Ecology (Washington), and U.S. Ecology (Nevada)

Subsequent Revisions

- Revision 1, October 1989
- Revision 2, July 1991
- Revision 3, May 1993
 - U.S. Ecology Nevada site closed and is no longer included in updates
 - Barnwell imposes \$220/ft³ out-of-region access fee and \$74/ft³ in-region access fee
- Revision 4, June 1994
- Revision 5, August 1995
 - U.S. Ecology restricts access to Northwest and Rocky Mountain Compacts
 - Barnwell allows access for all states except Northwest and Rocky Mountain Compacts
- Revision 6, September 1996
- Revision 7, November 1997

Subsequent Revisions

- Revision 8, December 1998 (major update)
 - Waste vendor option first added (to address significant overestimating of burial costs due to assumption that all LLW is disposed of at Barnwell rates)
 - NEI assists in obtaining price quotes from 5 waste vendors
 - Yankee Rowe decommissioning data shows 63% of LLW shipped to waste vendors (NUREG-1307 analysis assumes 93-95%)
- Revision 9, September 2000
- Revision 10, October 2002
 - Price quotes obtained for 3 vendors
- Revision 11, June 2005
 - Price quotes obtained for 2 vendors
- Revision 12, 2007
 - Price quotes obtained for 3 vendors

NUREG-1307, Revision 13

- November, 2008
- Barnwell closed to states outside of the Atlantic Compact
 - Generic LLW disposal site added for first time.
 - Costs assumed to be the same as for Barnwell
- Price quotes obtained for 3 vendors
- First time price quote obtained for EnergySolutions Utah disposal facility (not used to avoid having to make major change in NUREG-1307 methodology)

NUREG-1307, Revision 14

- November, 2010
- No price quotes obtained from vendors
- Price quote obtained for EnergySolutions Utah disposal facility
- Based on available data, B_x for vendor option changed to use EnergySolutions Utah facility data only
- Text added to Rev. 14 report indicating that the vendor option may be further changed in the Rev. 15 update to reflect additional information

NUREG-1307, Revision 15 (Draft)

- No price quotes obtained from vendors
- Price quote obtained for EnergySolutions Utah disposal facility
- Based on available data, B_x for vendor option based on EnergySolutions Utah facility data only
- Assumed 60% of LLW goes to waste vendors and 40% goes to generic LLW site (Barnwell)
 - Change made to further bring the formula decommissioning cost estimate into alignment with site-specific decommissioning cost estimates (split reflects the weighted average of the percentage of the total LLW volume going to vendors based on data from the site specific decommissioning cost estimates – Table A-4)
 - Key Assumption: waste vendor volume is priced at EnergySolutions cost and all other waste volume (i.e., that designated to go to directly to EnergySolutions and/or Barnwell) is priced at Barnwell cost

Conclusion

- The vendor option in recent revisions of NUREG-1307 underestimates the cost of decommissioning (when compared to site-specific decommissioning cost estimates and actual costs reported for NPPs that have completed decommissioning)
 - Draft NUREG-1307, Rev. 15, attempts to better align the formula estimate and the site-specific decommissioning cost estimates
- Revising the vendor/full-service disposal ratio to be 95/5 recommended by NEI would make under estimation of decommissioning costs by the formula even worse

Sexton, Kimberly

Outside of Scope

From: BONANNO, Jerry [mailto:jxb@nei.org]
Sent: Monday, December 03, 2012 11:01 AM
To: Sexton, Kimberly
Subject: RE: LLW Decommissioning

OK, thanks.

From: Sexton, Kimberly [mailto:Kimberly.Sexton@nrc.gov]
Sent: Monday, December 03, 2012 11:00 AM
To: BONANNO, Jerry
Subject: LLW Decommissioning

Hi Jerry,

I got your vm. Sorry I didn't get back to you last week – I was at a conference and just returned to the office today.

Mike Franovich is following the issue in our office and has the NEI comment letter. There's nothing else that we need from NEI right now but if there is, I'll be sure to let you know.

Thanks,

Kimberly A. Sexton
Legal Counsel
Office of Commissioner William C. Ostendorff
U.S. Nuclear Regulatory Commission
(301) 415-3599 (office)
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Sent through mail.messaging.microsoft.com

Kock, Andrea

From: PHELPS, Suzanne [srp@nei.org]
Sent: Tuesday, December 04, 2012 1:41 PM
To: Kock, Andrea
Subject: RE: NEI Nuclear Fuel Supply Forum

You're very welcome. I'm happy to answer any questions at all. Thank you for your help.

Suzanne R. Phelps
Senior Project Manager, Fuel Cycle Policy and Programs

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E: srp@nei.org

From: Kock, Andrea [mailto:Andrea.Kock@nrc.gov]
Sent: Tuesday, December 04, 2012 1:38 PM
To: PHELPS, Suzanne
Subject: RE: NEI Nuclear Fuel Supply Forum

Thank you

Andrea Kock
United States Nuclear Regulatory Commission
Policy Advisor for Materials
Office of Commissioner Ostendorff
301-415-2896

From: PHELPS, Suzanne [mailto:srp@nei.org]
Sent: Tuesday, December 04, 2012 1:32 PM
To: Kock, Andrea
Subject: RE: NEI Nuclear Fuel Supply Forum

Yes, that would be in addition to the 25 minutes.

Suzanne R. Phelps
Senior Project Manager, Fuel Cycle Policy and Programs

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From: Kock, Andrea [<mailto:Andrea.Kock@nrc.gov>]

Sent: Tuesday, December 04, 2012 1:25 PM

To: PHELPS, Suzanne

Subject: RE: NEI Nuclear Fuel Supply Forum

Thanks. And then there will be Q and A, right?

Andrea Kock
United States Nuclear Regulatory Commission
Policy Advisor for Materials
Office of Commissioner Ostendorff
301-415-2896

From: PHELPS, Suzanne [<mailto:srp@nei.org>]

Sent: Tuesday, December 04, 2012 1:25 PM

To: Kock, Andrea

Subject: RE: NEI Nuclear Fuel Supply Forum

Roughly 25 minutes of remarks would be about right, but a little either way is fine.

Suzanne R. Phelps
Senior Project Manager, Fuel Cycle Policy and Programs

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E: srp@nei.org

From: Kock, Andrea [<mailto:Andrea.Kock@nrc.gov>]

Sent: Tuesday, December 04, 2012 1:23 PM

To: PHELPS, Suzanne

Subject: RE: NEI Nuclear Fuel Supply Forum

Thank you Susan! Should the Commissioner plan to speak from 9:00-9:30? Or longer?

Andrea Kock
United States Nuclear Regulatory Commission
Policy Advisor for Materials
Office of Commissioner Ostendorff
301-415-2896

From: PHELPS, Suzanne [mailto:srp@nei.org]
Sent: Tuesday, December 04, 2012 11:35 AM
To: Kock, Andrea
Cc: REDMOND, Everett
Subject: NEI Nuclear Fuel Supply Forum

Andrea,

Attached for your information is a very preliminary draft agenda for our January 30 Nuclear Fuel Supply Forum Meeting. It is still quite fluid, and as of right now the only presentation I can guarantee besides Commissioner Ostendorff is Alex Flint, our Senior Vice President for Governmental Affairs. He will speak immediately after Commissioner Ostendorff. His observations on the Congressional outlook are always interesting and enlightening, so Commissioner Ostendorff may be interested in staying long enough to hear that. Of course he is welcome to attend as much of the remainder of the meeting as his schedule allows.

I expect to be locking down more presentations over the next week or so, and I will certainly keep you informed as the agenda evolves. Thank you very much for your assistance. If you have any additional questions, please let me know.

Best regards,

Suzanne R. Phelps
Senior Project Manager, Fuel Cycle Policy and Programs

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E: srp@nei.org

Sexton, Kimberly

From: ZORN, Jason [jcz@nei.org]
Sent: Tuesday, December 11, 2012 11:33 AM
To: Sexton, Kimberly
Subject: RE: (b)(6)

(b)(6)

From: Sexton, Kimberly [mailto:Kimberly.Sexton@nrc.gov]
Sent: Tuesday, December 11, 2012 11:26 AM
To: ZORN, Jason
Subject: RE: (b)(6)

(b)(6)

From: ZORN, Jason [mailto:jcz@nei.org]
Sent: Tuesday, December 11, 2012 9:42 AM
To: Sexton, Kimberly
Subject: RE: (b)(6)

(b)(6)

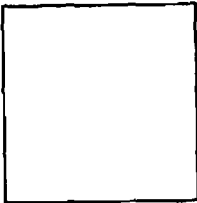
From: Sexton, Kimberly [mailto:Kimberly.Sexton@nrc.gov]
Sent: Tuesday, December 11, 2012 9:33 AM
To: ZORN, Jason; Reddick, Darani
Subject: (b)(6)

(b)(6)

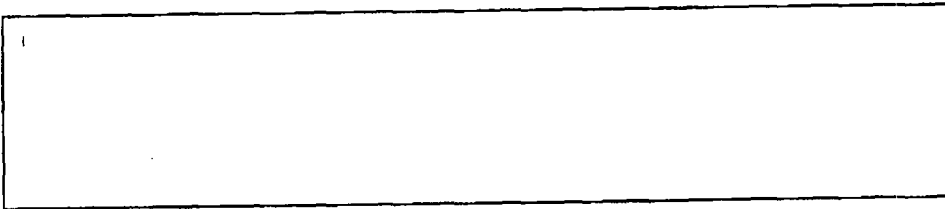
(b)(6)

(b)(6)

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Sexton, Kimberly

Outside of Scope

From: BELL, Russ [<mailto:rjb@nei.org>]
Sent: Tuesday, November 06, 2012 12:10 PM
To: Tappert, John
Subject: Letter on Changes during Construction

John,
Just wanted to follow up with you on our last conversation. We decided not to send a letter to the Commission at this time on CDC. Instead, we sent the attached letter to Mike Mayfield as a follow-up to our constructive interactions with the NRO staff on Oct. 18. We also had a good conversation with Glenn Tracy at the NPOC meeting on Oct. 25.

So this is just FYI.

Thanks,

Russ Bell
Director New Plant Licensing

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United Nuclear Energy Institute



Russell J. Bell
DIRECTOR
NEW PLANT LICENSING
NUCLEAR GENERATION DIVISION

November 1, 2012

Mr. Michael E. Mayfield
Director, Advanced Reactor Program
Office of New Reactors
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

Subject: Changes During Construction

Project Number: 689

Dear Mr. Mayfield:

On July 17, 2012, the Nuclear Energy Institute¹ (NEI) provided for NRC staff review proposed guidance for dealing with emergent changes during construction. The guidance is part of the broader staff review of NEI 96-07, Appendix C, Guideline for Implementation of Change Control Processes for New Nuclear Power Plants Licensed Under 10 CFR Part 52. We appreciate the staff's feedback on the proposed emergent change guidance in public meetings on September 6, September 20 and October 18, 2012. The purpose of this letter is to follow up on and reinforce key points from the October 18 public meeting to assist the staff's continuing review.

As discussed with the staff, licensees are concerned that the current process for making emergent changes during construction under 10 CFR Part 52 is proving challenging in the real world construction environment and is not necessary to assure public health and safety. A workable emergent change process is needed to avoid undue disruptions in the construction sequence. Proposed industry guidance in Section 4.1.1.1 of NEI 96-07, Appendix C, provides that licensees may, under emergent circumstances and provided that no license amendment is required, proceed with construction to resolve a nonconformance or other emergent condition in parallel with any required change to the licensing basis.

¹ NEI is the organization responsible for establishing unified nuclear industry policy on matters affecting the nuclear energy industry, including the regulatory aspects of generic operational and technical issues. NEI's members include all utilities licensed to operate commercial nuclear power plants in the United States, nuclear plant designers, major architect/engineering firms, fuel fabrication facilities, materials licensees, and other organizations and individuals involved in the nuclear energy industry.

Response to NRC Comments on Constructing in Accordance with the COL

In a letter dated August 31, 2012, the NRC staff provided the following comments on the proposed NEI guidance:

Continued construction is dependent upon the as-built plant correctly reflecting the [current licensing basis] CLB. Corrections of as-built, emergent, non-conformances with the CLB that are not reworked to reflect the CLB must be evaluated by the licensee's processes and procedures to update the CLB, and obtain prior NRC approval, if required, prior to the construction of the correction (repair or use-as-is).

Before commencing construction in accordance with a change to the CLB, including changes intended to correct the CLB, the appropriate change process must be completed as required.

The August 31 NRC comments did not provide a basis for the staff position. Since that time, however, the staff has pointed to existing NRC regulations during public meetings on the subject. Among the regulations cited by the staff are Section VIII.B.5.a of the design certification rules, 10 CFR 52.97(a)(1)(iii) and 10 CFR 50.10(c). NEI does not believe these or any other NRC regulations preclude the emergent change process guidance proposed by industry. In particular,

- Section VIII.B.5.a of the design certification rules does not constrain construction or the timing of construction; it constrains departures from Tier 2 information, i.e., departures from the licensing basis.
- While the Commission must find in accordance with 10 CFR 52.97(a)(1)(iii) that there is reasonable assurance that the facility will be constructed and will operate in conformity with the license, construction has numerous interim states, and there is no NRC requirement that construction-in-progress conform at all times to the current licensing basis. Ultimately, per 10 CFR 52.97(b), verification of inspections, tests, analyses and acceptance criteria (ITAAC) provides reasonable assurance that the facility has been constructed in conformity with the license. During construction, licensee processes assure configuration control and that the facility is constructed in conformity with the license.
- 10 CFR 50.10(c) requires only that no person may begin construction without a permit or license. A COL holder complies with this requirement.

While not mentioned by the staff in connection with the regulatory basis for its position, the concept of construction-in-progress is acknowledged in 10 CFR 52.99(b), which states:

With respect to activities subject to an ITAAC, an applicant for a combined license may proceed at its own risk with design and procurement activities, and a licensee may proceed at its own risk with design, procurement, construction, and

preoperational activities, even though the NRC may not have found that any one of the prescribed acceptance criteria are met.

Additionally, the licensing basis for a combined license includes the applicable change processes in Part 50 and Section VIII of the referenced design certification rule as specified in 10 CFR 52.98. During construction, licensees are considered to be in compliance with the license provided construction is in accordance with the approved licensing basis, including changes/departures that have been or are being made in accordance with the requirements of the applicable change process(es). The license amendment request (LAR) process assures transparency to the public for all changes/departures that require prior NRC approval.

NEI further believes the proposed industry guidance is consistent with the Preliminary Amendment Request (PAR) process and the NRC's September 27, 2012, letter to Louisiana Energy Services, LLC, on a similar issue concerning changes during construction.

Attributes of the Proposed Process for Emergent Changes during Construction

As discussed with the staff on October 18, 2012, NEI supports a process that protects public health and safety, is consistent with NRC requirements and Commission policy, and enables COL holders to efficiently construct their facilities under a Part 52 combined license. Key attributes of this process include:

- Proper balance between design control and flexibility
- Configuration management and transparency for both NRC inspectors and licensees in connection with pending changes
- Assurance that the facility is constructed in conformity with the license.

A key objective of the industry's proposed guidance is a sound, workable and sustainable process for resolving emergent conditions (e.g., nonconformances) without undue disruptions in construction work flow. While most changes to resolve emergent conditions do not require prior NRC approval (i.e., license amendment), many impact design control document (DCD) Tier 2 or other licensing basis information. The process for changing the licensing basis, including completing and documenting the change/departure review, is disciplined and rigorous and can take days, or even weeks, to complete depending on the change and factors related to the licensee's organizational structure. As such, a process that does not permit construction to resolve an emergent condition in parallel with a required licensing basis change is problematic in a dynamic construction environment.

Changes to resolve emergent conditions are a large and important category of changes during construction of complex industrial facilities, and an efficient process for dealing with them is vital. Delaying construction for days or weeks pending completion of a licensing basis change is neither necessary nor appropriate for changes that do not require prior NRC approval.

Mr. Michael E. Mayfield
November 1, 2012
Page 4

Under the industry-proposed guidance, a licensee may continue with construction activities to resolve emergent conditions based on an approved engineering solution and an assessment of its impact on the licensing basis—provided this assessment does not determine that an LAR is required. This work is considered at-risk because it is performed in parallel with any required change to the licensing basis, including completion and documentation of the change/departure review. If at any point it is determined that a proposed change/departure requires prior NRC approval, the licensee must submit an LAR and may submit a PAR. If a required LAR is ultimately denied by the NRC, the licensee must return the facility to its current licensing basis. As discussed with the NRC staff, licensee processes will assure configuration management and transparency of pending licensing basis changes in support of NRC's continuing inspection activities.

We believe the industry's proposed process properly balances design control with the flexibility needed in a dynamic construction environment, consistent with NRC requirements and Commission policy. As licensees and the NRC encounter challenges associated with first-ever construction under a Part 52 combined license, we appreciate the continued opportunity to engage the NRC staff to ensure that the intended objectives of Part 52 are met in real-world application.

We trust this letter is helpful to the staff's consideration of the information we provided in the October 18 public meeting. We look forward to receiving the staff's feedback and further interactions as necessary to facilitate finalizing guidance on emergent changes during construction and the whole of NEI 96-07, Appendix C, for final NRC review and endorsement.

If you have any questions, please contact me or Kati Austgen (202-739-8068; kra@nei.org).

Sincerely,



Russell J. Bell

c: Mr. David B. Matthews, NRO/DNRL, NRC
Ms. Amy E. Cabbage, NRO/DARR/APOB, NRC
NRC Document Control Desk

Sexton, Kimberly

Outside of Scope

From: ZORN, Jason [mailto:jcz@nei.org]
Sent: Thursday, June 14, 2012 11:32 AM
To: Ostendorff, William
Subject: (b)(6)

(b)(6)

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